

1                   **STATE OF OKLAHOMA, CHOCTAW NATION OF OKLAHOMA,**  
2                   **CHICKASAW NATION, CITY OF OKLAHOMA CITY WATER SETTLEMENT**

3   **AUGUST 2016**

4  
5   **PREAMBLE**

6                   **WHEREAS**, the State of Oklahoma is a state of the United States of America possessing  
7 the sovereign powers and rights of a state;

8                   **WHEREAS**, the Chickasaw Nation is a federally recognized American Indian Tribe  
9 possessing sovereign powers and rights to self-government under federal law;

10                   **WHEREAS**, the Choctaw Nation of Oklahoma is a federally recognized American  
11 Indian Tribe possessing sovereign powers and rights to self-government under federal law;

12                   **WHEREAS**, the City of Oklahoma City is an Oklahoma municipal corporation and a  
13 charter city organized and existing pursuant to the Oklahoma State Constitution;

14                   **WHEREAS**, unresolved questions of law relating to tribal water rights and jurisdictional  
15 authorities relating thereto have precipitated long-running conflicts in the Settlement Area, in  
16 particular within the Kiamichi Basin and with regard to Sardis Lake, which conflicts most  
17 recently included *Chickasaw Nation and Choctaw Nation of Oklahoma v. Fallin, et al.*, and  
18 *Oklahoma Water Resources Board v. United States, et al.*; and

19                   **WHEREAS**, by entering into the Settlement Agreement, the State, the Nations, and the  
20 City resolve disputes relating to Sardis Lake and the Chickasaw Nation’s and Choctaw Nation of  
21 Oklahoma’s claims to water and to water rights and agree to proceed as set forth herein.

22                   **NOW, THEREFORE**, the parties signatory hereto (“Parties” or, when singular, “Party”)  
23 agree and bind themselves as follows:

1    **1.     DEFINITIONS**

2       **1.1     1974 Contract** – means the contract approved by the Secretary of the United States  
3 Army on April 9, 1974, entered into between the Water Conservation Storage Commission of the  
4 State of Oklahoma, predecessor of the Oklahoma Water Resources Board, and the United States  
5 through the United States Army Corps of Engineers.

6       **1.2     Adequate Hydrological Model** – means a hydrologic model that satisfies the  
7 requirements of Section 5.3.1.2.2.

8       **1.3     Administrative Set-Aside** – means thirty-seven thousand nine hundred eight  
9 (37,908) AF of Conservation Storage Capacity for the twenty thousand (20,000) AFY set-aside  
10 for use in southeastern Oklahoma, inclusive of the subcontract between the Oklahoma Water  
11 Resources Board and the Sardis Lake Water Authority dated October 22, 1999, as specified in  
12 OAC § 785:20-5-5(b)(3), as such rule exists as of the Execution Date.

13       **1.4     Advanced Drought Conditions** – means those conditions when: (i) the cumulative  
14 amount of stored water in the City Reservoirs is between sixty-five percent (65%) and fifty  
15 percent (50%) of the cumulative amount of Live Storage Capacity for the City Reservoirs and  
16 (ii) the amounts of water stored in Hefner Reservoir and Draper Reservoir are between sixty-five  
17 percent (65%) and fifty percent (50%) of each reservoir’s respective Live Storage Capacity.

18       **1.5     AF** – means acre-feet.

19       **1.6     AFY** – means acre-feet per year.

20       **1.7     Allotment** – means that land within the Settlement Area held by an Allottee subject  
21 to a statutory restriction on alienation or held by the United States in trust for the benefit of an  
22 Allottee.

1       **1.8 Allottee** – means an enrolled member of the Choctaw Nation of Oklahoma or citizen  
2 of the Chickasaw Nation who, or whose estate, holds an interest in an Allotment.

3       **1.9 Amended Permit Application** – means the City of Oklahoma City’s permit  
4 application filed with the Oklahoma Water Resources Board, No. 2007-017, as amended  
5 pursuant to Section 6.1.

6       **1.10 Amended Storage Contract Transfer Agreement** – means the Storage Contract  
7 Transfer Agreement between the Oklahoma City Water Utilities Trust and Oklahoma Water  
8 Resources Board, as amended by the City of Oklahoma City, the Oklahoma City Water Utilities  
9 Trust, and Oklahoma Water Resources Board to substantially conform with Exhibit 4 and which  
10 may be revised as necessary for purposes of conforming to the Settlement Act.

11       **1.11 Atoka and Sardis Conservation Projects Fund** – means the fund established  
12 pursuant to Section 6.5.2.1.2.

13       **1.12 Atoka and Sardis Conservation Projects Board** – means the body formed pursuant  
14 to Section 6.5.2.1.1.

15       **1.13 Atoka Reservoir** – means the reservoir located approximately four (4) miles  
16 northeast of the City of Atoka, whose dam is in Section 30, Township 1 South, Range 12 East of  
17 the Indian Meridian in Atoka County, Oklahoma.

18       **1.14 Baseline Lake Levels** – means those Sardis Lake surface elevations specified at  
19 Section 6.1.8.1.

20       **1.15 Bypass Requirement** – means fifty (50) cfs of the three hundred (300) cfs flow rate,  
21 specified at Section 6.1.5.2 for the City Permit, as measured within reasonable operational  
22 constraints, which shall be bypassed at the Point of Diversion when the City of Oklahoma City is  
23 diverting water at the Point of Diversion.

1       **1.16 Canton Reservoir** – means the reservoir located on the North Canadian River at river  
2 mile 394.3, about two (2) miles north of the Town of Canton in Blaine County, Oklahoma.

3       **1.17 cfs** – means cubic-feet per second.

4       **1.18 Chickasaw Nation** – means the Chickasaw Nation, a federally recognized American  
5 Indian Tribe organized by a Constitution its citizens ratified in 1856 and subsequently modified  
6 and re-ratified in 1983 and subsequently amended.

7       **1.19 Choctaw Nation of Oklahoma (“Choctaw Nation”)** – means the Choctaw Nation of  
8 Oklahoma, a federally recognized American Indian Tribe organized by a Constitution its citizens  
9 ratified in 1830 and subsequently modified and re-ratified in 1983.

10       **1.20 City of Oklahoma City (“City”)** – means the City of Oklahoma City, an Oklahoma  
11 municipal corporation and a charter city organized and existing pursuant to Oklahoma  
12 Constitution Article XVIII, Section 3. References to “City” or “City of Oklahoma City” shall  
13 refer to the City or the City and the Oklahoma City Water Utilities Trust acting jointly as  
14 applicable to the capacity set forth in the said reference.

15       **1.21 City Diversion Rate** – means the diversion rate specified at Section 6.1.5.1.

16       **1.22 City Permit** – means the final permit, as that term is used in Section 6.2.3.3, issued  
17 by the Oklahoma Water Resources Board to the City of Oklahoma City pursuant to the Amended  
18 Permit Application, which permit conforms with Section 6.1.

19       **1.23 City Reservoirs** – means Atoka Reservoir, Canton Reservoir, Draper Reservoir,  
20 Hefner Reservoir, McGee Creek Reservoir, and Overholser Reservoir; individually, “City  
21 Reservoir.”

1       **1.24 City Sardis Storage** – means the Conservation Storage Capacity the City of  
2 Oklahoma City will receive pursuant to the Amended Storage Contract Transfer Agreement and  
3 use and maintain in accord with Section 6.

4       **1.25 Conservation Storage Capacity** – means the water storage capacity in Sardis Lake  
5 stated in Exhibit A of the 1974 Contract: (i) to be between elevations five hundred forty-two  
6 (542) feet and five hundred ninety-nine (599) feet MSL in Sardis Lake and (ii) estimated to be  
7 two hundred ninety-seven thousand two hundred (297,200) AF of storage.

8       **1.26 Draper Reservoir (“Lake Stanley Draper”)** – means the reservoir whose dam is  
9 located in Section 24, Township 10 North, Range 2 West of the Indian Meridian in Cleveland  
10 County, Oklahoma.

11       **1.27 Drought Conditions** – means Moderate Drought Conditions, Advanced Drought  
12 Conditions, or Extreme Drought Conditions.

13       **1.28 Enactment Date** – means the date on which the Settlement Legislation is an enacted  
14 federal public law.

15       **1.29 Enforceability Date** – means the date on which the Secretary of the United States  
16 Department of the Interior publishes notice in the Federal Register certifying that the conditions  
17 of Section 4 have been satisfied.

18       **1.30 Execution Date** – means the date on which the State of Oklahoma, Chickasaw  
19 Nation, Choctaw Nation of Oklahoma, Oklahoma Water Resources Board, City of Oklahoma  
20 City, and Oklahoma City Water Utilities Trust shall have signed the Settlement Agreement,  
21 which shall be deemed August 17, 2016, once the Settlement Agreement has been executed by  
22 the State of Oklahoma, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Oklahoma

1 Water Resources Board, the City of Oklahoma City, and the Oklahoma City Water Utilities  
2 Trust.

3 **1.31 Expiration Date** – means September 30, 2020, unless extended as allowed by  
4 Section 13.3.

5 **1.32 Extreme Drought Conditions** – means those conditions when: (i) the cumulative  
6 amount of stored water in the City Reservoirs is less than fifty percent (50%) of the cumulative  
7 amount of Live Storage Capacity for the City Reservoirs and (ii) the amounts of water in Hefner  
8 Reservoir and Draper Reservoir are less than fifty percent (50%) of each reservoir’s respective  
9 Live Storage Capacity.

10 **1.33 Hefner Reservoir** – means the reservoir whose dam is located in Section 23,  
11 Township 13 North, Range 4 West of the Indian Meridian in Oklahoma County, Oklahoma.

12 **1.34 Kiamichi Basin Hydrologic Model** – means the surface water hydrologic model for  
13 the Kiamichi Basin, inclusive of tributaries thereto, that the State of Oklahoma, the Chickasaw  
14 Nation, the Choctaw Nation of Oklahoma, and the City of Oklahoma City developed for  
15 purposes of the Settlement Agreement and as referenced in Sections 5.3.1.2.5.6, 5.3.1.2.5.7, and  
16 6.2.1. Documentation of the Kiamichi Basin Hydrologic Model will be available at Oklahoma  
17 Water Resources Board offices in Oklahoma City, as provided in Section 4.1.7. A summary  
18 technical memorandum describing the model is included as Exhibit 3.

19 **1.35 Kiamichi Basin** – means that hydrologic basin designated by the Oklahoma Water  
20 Resources Board in the 2012 Update to the Oklahoma Comprehensive Water Plan as subbasins 5  
21 and 6, and generally depicted in Exhibit 10.

22 **1.36 Live Storage Capacity** – means the amount of storage capacity in a City Reservoir,  
23 as calculated and measured pursuant to Section 6.1.8.3.

1       **1.37 McGee Creek Reservoir** – means the reservoir whose dam is located in Section 7,  
2 Township 3 South, Range 14 East of the Indian Meridian in Atoka County, Oklahoma.

3       **1.38 Mean Annual Flow** – means the average annual runoff for a Settlement Area  
4 Hydrologic Basin modeled at, or in close proximity to, the basin outflow point utilizing primarily  
5 stream flow data from USGS gaging stations.

6       **1.39 Mean Available Flow** – means the Mean Annual Flow of a Settlement Area  
7 Hydrologic Basin that remains after subtracting that portion of such flows as are necessary to  
8 satisfy permitted appropriate uses, any surface water right developed by either Nation pursuant  
9 to Section 7.7, domestic use set aside calculated based on six (6) AFY per one hundred sixty  
10 (160) acres within the basin, prior vested rights, any surface water right recognized pursuant to  
11 Section 8 (to the extent not already subtracted), pending applications, reservoir yields, and other  
12 designated purposes in the Settlement Area Hydrologic Basin, including but not limited to  
13 apportionment provisions of interstate stream compacts to which the State of Oklahoma is a  
14 party as calculated by any rules developed by any applicable compact commission.

15       **1.40 mgd** – means million-gallons per day.

16       **1.41 MSL** – means mean sea level.

17       **1.42 Moderate Drought Conditions** – means those conditions when: (i) the cumulative  
18 amount of stored water in the City Reservoirs is between seventy-five percent (75%) and sixty-  
19 five percent (65%) of the cumulative amount of Live Storage Capacity for the City Reservoirs  
20 and (ii) the amounts of water stored in Hefner Reservoir and Draper Reservoir are between  
21 seventy-five percent (75%) and sixty-five percent (65%) of each reservoir’s respective Live  
22 Storage Capacity.

1       **1.43 Nations** – means collectively the Choctaw Nation of Oklahoma and the Chickasaw  
2 Nation.

3       **1.44 Non-Trust Land** – means land within the State of Oklahoma held by either the  
4 Chickasaw Nation or Choctaw Nation of Oklahoma in fee and in which the United States holds  
5 no interest as trustee.

6       **1.45 Oklahoma City Water Utilities Trust (“Trust”)** – means the Oklahoma City Water  
7 Utilities Trust, and its successor entities, if any, formerly known as the Oklahoma City  
8 Municipal Improvement Authority, a public trust established pursuant to state law with the City  
9 of Oklahoma City as its beneficiary. References to “Trust” shall refer to the Oklahoma City  
10 Water Utilities Trust acting severally in the said reference.

11       **1.46 Oklahoma Water Resources Board (“OWRB”)** – means a body corporate and  
12 politic and an instrumentality, agency, and department of the State of Oklahoma, created by and  
13 existing pursuant to Oklahoma law, and its successor entities, if any.

14       **1.47 Out-of-State Use of Settlement Area Waters** – means any use of water or the  
15 transfer of any right to use water, including by forbearance agreement, diverted or taken from a  
16 location within the Settlement Area for use at a location outside the exterior boundaries of the  
17 State of Oklahoma.

18       **1.48 Overholser Reservoir** – means the reservoir whose dam is located in Section 30,  
19 Township 12 North, Range 4 West of the Indian Meridian in Oklahoma County, Oklahoma.

20       **1.49 Parallel City Pipeline** – means the second pipeline the City contemplates  
21 constructing between Lake Atoka in Atoka County, Oklahoma, and Lake Stanley Draper in  
22 Cleveland County, Oklahoma, approximately ninety-six (96) miles in length whose route is  
23 identified as generally following an existing pipeline constructed for the same purposes and



1 placed in operation in 1962, and which includes a water diversion structure, pumping station, and  
2 pipeline beginning at a point on the Kiamichi River near Moyer's Crossing and following road  
3 rights of way, purchased, or existing easements to a terminus point at Lake Atoka in Atoka  
4 County, Oklahoma.

5 **1.50 Parties** – means the State of Oklahoma, Chickasaw Nation, Choctaw Nation of  
6 Oklahoma, Oklahoma Water Resources Board, City of Oklahoma City, and Oklahoma City  
7 Water Utilities Trust as of the Execution Date; and the United States, State of Oklahoma,  
8 Chickasaw Nation, Choctaw Nation of Oklahoma, Oklahoma Water Resources Board, City of  
9 Oklahoma City, and Oklahoma City Water Utilities Trust as of the Post-Enactment Execution  
10 Date.

11 **1.51 Point of Diversion** – means the point of diversion for the City Permit, as defined at  
12 Section 6.1.3.

13 **1.52 Post-Enactment Execution Date** – means the date after the Enactment Date on  
14 which the Chickasaw Nation and Choctaw Nation of Oklahoma, the Secretary of the United  
15 States Department of the Interior on behalf of the United States, the State of Oklahoma, the City  
16 of Oklahoma City, and the Oklahoma City Water Utilities Trust have all executed the Settlement  
17 Agreement or the Revised Settlement Agreement.

18 **1.53 Revised Settlement Agreement** – means the Settlement Agreement as the same may  
19 be revised as necessary for purposes of conforming to the Settlement Act as of the Post-  
20 Enactment Execution Date.

21 **1.54 Sardis Lake** – means the reservoir, formerly known as Clayton Lake, whose dam is  
22 located in Section 19, Township 2 North, Range 19 East of the Indian Meridian in Pushmataha  
23 County, Oklahoma.

1       **1.55 Sardis Lake Release Restrictions** – means those limitations on the City of  
2 Oklahoma City’s ability to release water from City Sardis Storage specified at Section 6.1.8.

3       **1.56 Settlement Act** – means the Settlement Legislation upon its enactment into federal  
4 law in a form that substantially conforms with Exhibit 2.

5       **1.57 Settlement Agreement** – means this agreement as of the Execution Date or the  
6 Revised Settlement Agreement, as applicable.

7       **1.58 Settlement Area** – means that area lying between the South Canadian River and the  
8 Oklahoma and Texas state line, the Oklahoma and Arkansas state line, and the 98th Meridian  
9 and which generally includes the following counties, or portions thereof, in the State of  
10 Oklahoma: Atoka, Bryan, Carter, Choctaw, Coal, Garvin, Grady, McClain, Murray, Haskell,  
11 Hughes, Jefferson, Johnston, Latimer, LeFlore, Love, Marshall, McCurtain, Pittsburgh, Pontotoc,  
12 Pushmataha, and Stephens, which area is depicted in the attached map, Exhibit 1 (dated August  
13 2016).

14       **1.59 Settlement Area Hydrologic Basin(s)** – means the following basins, as denominated  
15 in the 2012 Update of the Oklahoma Comprehensive Water Plan: Basins 24, 25, and 26  
16 (commonly referred to as the Beaver Creek), Basins 11 and 12 (commonly referred to as the  
17 Blue), Basin 9 (commonly referred to as the Clear Boggy), Basins 5 and 6 (commonly referred to  
18 as the Kiamichi), Basins 46 and 47 (commonly referred to as the Lower Arkansas), Basins 48,  
19 56, and 57 (commonly referred to as the Lower Canadian), Basin 2 (commonly referred to as the  
20 Little), Basin 14 (commonly referred to as the Lower Washita), Basin 58 (commonly referred to  
21 as the Middle Canadian), Basin 4 (commonly referred to as the Mountain Fork), Basins 15 and  
22 16 (commonly referred to as the Middle Washita), Basin 23 (commonly referred to as the Mud  
23 Creek), Basins 7 and 8 (commonly referred to as the Muddy Boggy), Basins 44 and 45

1 (commonly referred to as the Poteau), Basins 1, 10, 13, and 21 (commonly referred to as the Red  
2 River Mainstem), Basin 3 (commonly referred to as the Upper Little), and Basin 22 (commonly  
3 referred to as the Walnut Bayou), which basins are illustrated in the attached map, Exhibit 10,  
4 (dated August 2016).

5 **1.60 Settlement Area Waters** – means water located within the Settlement Area.

6 **1.61 Settlement Commission** – means the body established in accord with Section  
7 5.3.3.2.

8 **1.62 Settlement Legislation** – means the federal legislation that includes those terms  
9 necessary to secure implementation, enforceability, and federal approval of the Settlement  
10 Agreement, a copy of which as drafted by the Parties as of the Execution Date is included as  
11 Exhibit 2, which exhibit shall be replaced with the Settlement Act prior to the Enforceability  
12 Date.

13 **1.63 State of Oklahoma (“State”)** – means the State of Oklahoma, a state of the United  
14 States of America, inclusive of its subsidiary agencies.

15 **1.64 Storage Contract Transfer Agreement** – means the agreement entered between the  
16 Oklahoma Water Resources Board and the Oklahoma City Water Utilities Trust, dated June 15,  
17 2010.

18 **1.65 Technical Committee** – means that committee formed pursuant to Section 5.3.1.2.1.

19 **1.66 Title 82** – means Title 82 of the Oklahoma Statutes or any recodification thereof.

20 **1.67 Trust Land** – means allotted or unallotted land held by the United States in trust for  
21 the benefit of either the Chickasaw Nation or the Choctaw Nation of Oklahoma.

22 **1.68 United States** – means the United States of America acting in its capacity as trustee  
23 for the Nations, their respective members, citizens, and Allottees, or as specifically stated or

1 limited in any given reference herein, in which case it shall mean the United States of America  
2 acting in the capacity as set forth in said reference.

3 **2. WAIVERS AND RELEASES OF CLAIMS AND OBJECTIONS**

4 **2.1 Waiver and Release of Claims and Objections by the Chickasaw Nation, the**  
5 **Choctaw Nation of Oklahoma, and the United States Acting in Its Capacity as Trustee for**  
6 **Each Nation** – Subject to the retention of rights set forth in Section 2.5 and except to the extent  
7 that rights are recognized in the Settlement Agreement or Settlement Act, including recognition  
8 of each Nation’s water rights, the Chickasaw Nation and Choctaw Nation, each in its own right  
9 and on behalf of its respective citizens and members (except in their capacity as Allottees), and  
10 the United States acting in its capacity as trustee for the Chickasaw Nation and Choctaw Nation  
11 and the respective citizens and members of each Nation (except in their capacity as Allottees),  
12 waive and release:

13 **2.1.1** all of the following claims the Chickasaw Nation, the Choctaw Nation, or the  
14 United States acting in its capacity as trustee for either Nation asserted or could have asserted in  
15 any proceeding filed or which could have been filed up to or upon the Enforceability Date,  
16 including *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v.*  
17 *United States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication:

18 **2.1.1.1** claims to the ownership of water in the State of Oklahoma;

19 **2.1.1.2** claims to water rights and rights to use water diverted or taken from a  
20 location within the State of Oklahoma;

21 **2.1.1.3** claims to authority over the allocation and management of water and  
22 administration of water rights, including authority over third-party ownership of or rights to use  
23 water diverted or taken from a location within the State of Oklahoma and ownership or use of

1 water on Allotments by Allottees or anyone using water on an Allotment with the Allottee's  
2 permission;

3 **2.1.1.4** claims that the State lacks authority over the allocation and management  
4 of water and administration of water rights, including authority over the ownership of or rights to  
5 use water diverted or taken from a location within the State of Oklahoma;

6 **2.1.1.5** any other claim relating to the ownership of water, regulation of water,  
7 or authorized diversion, storage, or use of water diverted or taken from a location within the  
8 State of Oklahoma, which claim is based on the Chickasaw Nation's or Choctaw Nation's  
9 particular status as a federally recognized American Indian tribe possessed of powers of  
10 sovereignty and self-government as defined by federal law and pursuant to those treaties to  
11 which either is a signatory;

12 **2.1.1.6** claims or defenses asserted or which could have been asserted in  
13 *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United*  
14 *States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication;

15 **2.1.2** all claims for damages, losses or injuries to water rights or water, or claims of  
16 interference with, diversion, storage, taking, or use of water (including claims for injury to land  
17 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use  
18 of water) attributable to any action by the State of Oklahoma, the Oklahoma Water Resources  
19 Board, or any water user authorized pursuant to state law to take or use water in the State of  
20 Oklahoma, including but not limited to the City of Oklahoma City, that accrued at any time up to  
21 and including the Enforceability Date;

1           **2.1.3** all claims and objections relating to the City of Oklahoma City’s Permit  
2 Application No. 2007-017, as amended pursuant to the Settlement Agreement and the Settlement  
3 Act, and the City Permit, including but not limited to:

4           **2.1.3.1** all claims regarding regulatory control over or Oklahoma Water  
5 Resources Board jurisdiction relating to such permit application and permit; and

6           **2.1.3.2** all claims for damages, losses or injuries to water rights or rights to use  
7 water, or claims of interference with, diversion, storage, taking, or use of water (including claims  
8 for injury to land resulting from such damages, losses, injuries, interference with, diversion,  
9 storage, taking, or use of water) attributable to the issuance and lawful exercise of the City  
10 Permit;

11           **2.1.4** all claims to regulatory control over the City of Oklahoma City’s Permit Numbers  
12 P80-48 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-  
13 282D for water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek  
14 Reservoir;

15           **2.1.5** all claims that the State lacks regulatory authority over or Oklahoma Water  
16 Resources Board jurisdiction relating to the City of Oklahoma City’s Permit Numbers P80-48  
17 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for  
18 water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;

19           **2.1.6** all claims to damages, losses or injuries to water rights or water, or claims of  
20 interference with, diversion, storage, taking, or use of water (including claims for injury to land  
21 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use  
22 of water) attributable to the City of Oklahoma City’s lawful exercise of Permit Numbers P80-48  
23 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for

1 water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir,  
2 that accrued at any time up to and including the Enforceability Date;

3 **2.1.7** all claims and objections relating to approval by the United States Army Corps of  
4 Engineers of the assignment of the 1974 Contract pursuant to the Amended Storage Contract  
5 Transfer Agreement; and

6 **2.1.8** all claims for damages, losses or injuries to water rights or water, or claims of  
7 interference with, diversion, storage, taking, or use of water (including claims for injury to land  
8 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use  
9 of water) attributable to the lawful exercise of rights pursuant to the Amended Storage Contract  
10 Transfer Agreement.

11 **2.2 Waivers and Releases of Claims and Objections by the Chickasaw Nation and**  
12 **the Choctaw Nation of Oklahoma Against the United States** – Subject to the retention of  
13 rights and claims set forth in Section 2.5 and except to the extent that rights are recognized in the  
14 Settlement Agreement or Settlement Act, the Chickasaw Nation and Choctaw Nation, each  
15 acting on behalf of itself and its respective citizens and members (except in their capacity as  
16 Allottees), shall execute a waiver and release of all claims against the United States (including  
17 any agency or employee of the United States) relating to:

18 **2.2.1** all of the following claims the United States acting in its capacity as trustee for  
19 either Nation asserted or could have asserted in any proceeding filed or which could have been  
20 filed up to or upon the Enforceability Date, including *Chickasaw Nation, Choctaw Nation v.*  
21 *Fallin et al.*, CIV 11-927 (W.D. Ok.) or *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.),  
22 or any general stream adjudication:  
23

1           **2.2.1.1**       claims to the ownership of water in the State of Oklahoma;

2           **2.2.1.2**       claims to water rights and rights to use water diverted or taken from a  
3 location within the State of Oklahoma;

4           **2.2.1.3**       claims to authority over the allocation and management of water and  
5 administration of water rights, including authority over third-party ownership of or rights to use  
6 water diverted or taken from a location within the State of Oklahoma and ownership or use of  
7 water on Allotments by Allottees or anyone else using water on an Allotment with the Allottee’s  
8 permission;

9           **2.2.1.4**       claims that the State lacks authority over the allocation and management  
10 of water and administration of water rights, including authority over the ownership of or rights to  
11 use water diverted or taken from a location within the State of Oklahoma;

12          **2.2.1.5**       any other claim relating to the ownership of water, regulation of water,  
13 or authorized diversion, storage, or use of water diverted or taken from a location within the  
14 State of Oklahoma, which claim is based on the Chickasaw Nation’s or Choctaw Nation’s  
15 particular status as a federally recognized American Indian tribe possessed of powers of  
16 sovereignty and self-government as defined by federal law and pursuant to those treaties to  
17 which either is a signatory;

18          **2.2.1.6**       claims or defenses asserted or which could have been asserted in  
19 *Chickasaw Nation, Choctaw Nation v. Fallin et al.*, CIV 11-927 (W.D. Ok.), *OWRB v. United*  
20 *States, et al.* CIV 12-275 (W.D. Ok.), or any general stream adjudication;

21          **2.2.2**       all claims for damages, losses or injuries to water rights or water, or claims of  
22 interference with, diversion, storage, taking, or use of water (including claims for injury to land  
23 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use



1 of water) attributable to any action by the State of Oklahoma, the Oklahoma Water Resources  
2 Board, or any water user authorized pursuant to state law to take or use water in the State of  
3 Oklahoma, including but not limited to the City of Oklahoma City, that accrued at any time up to  
4 and including the Enforceability Date;

5 **2.2.3** all claims and objections relating to the City of Oklahoma City’s Permit  
6 Application No. 2007-017, as amended pursuant to the Settlement Agreement and the Settlement  
7 Act, and the City Permit, including but not limited to:

8 **2.2.3.1** all claims regarding regulatory control over or Oklahoma Water  
9 Resources Board jurisdiction relating to such permit application and permit; and

10 **2.2.3.2** all claims for damages, losses or injuries to water rights or rights to use  
11 water, or claims of interference with, diversion, storage, taking, or use of water (including claims  
12 for injury to land resulting from such damages, losses, injuries, interference with, diversion,  
13 storage, taking, or use of water) attributable to the issuance and lawful exercise of the City  
14 Permit;

15 **2.2.4** all claims to regulatory control over the City of Oklahoma City’s Permit Numbers  
16 P80-48 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-  
17 282D for water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek  
18 Reservoir;

19 **2.2.5** all claims that the State lacks regulatory authority over or Oklahoma Water  
20 Resources Board jurisdiction relating to the City of Oklahoma City’s Permit Numbers P80-48  
21 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for  
22 water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir;

1           **2.2.6** all claims to damages, losses or injuries to water rights or water, or claims of  
2 interference with, diversion, storage, taking, or use of water (including claims for injury to land  
3 resulting from such damages, losses, injuries, interference with, diversion, storage, taking, or use  
4 of water) attributable to the City of Oklahoma City’s lawful exercise of Permit Numbers P80-48  
5 and 54-613 for water rights from the Muddy Boggy River for Atoka Reservoir and P73-282D for  
6 water rights from the Muddy Boggy River, including McGee Creek, for McGee Creek Reservoir,  
7 that accrued at any time up to and including the Enforceability Date;

8           **2.2.7** all claims and objections relating to the approval by the United States Army  
9 Corps of Engineers of the assignment of the Storage Contract of 1974 pursuant to the Amended  
10 Storage Contract Transfer Agreement;

11           **2.2.8** all claims relating to the United States’ litigation, prior to the Enforceability Date,  
12 of the Nations’ water rights in the State of Oklahoma; and

13           **2.2.9** all claims relating to the negotiation, execution, or adoption of the Settlement  
14 Agreement (including exhibits) or the Settlement Act.

## 15           **2.3 Tolling of Claims**

16           **2.3.1 In general** – Each applicable period of limitation and time-based equitable  
17 defense relating to a claim described in Section 2.1 and 2.2 shall be tolled during the period  
18 beginning on the Enactment Date and ending on the occurrence of either the Enforceability Date  
19 or the Expiration Date.

20           **2.3.2 Effect** – Nothing in Section 2.3 revives any claim or tolls any period of limitation  
21 or time-based equitable defense that expired before the Enactment Date.

22

1       **2.4     Effectiveness of Waivers and Releases**

2           **2.4.1** Nothing herein acknowledges the existence or validity of any claims that are  
3 being waived and released.

4           **2.4.2** The waivers and releases of Sections 2.1 and 2.2 will become effective on the  
5 Enforceability Date.

6       **2.5     Reservation of Rights and Retention of Claims by the Nations and the United**  
7 **States Acting in Its Capacity as Trustee for the Nations** – Notwithstanding the waivers and  
8 releases in Section 2.1 and 2.2, each respective Nation on its own behalf and on behalf of its  
9 respective members or citizens (except in their capacities as Allottees) and the United States,  
10 acting as trustee for each respective Nation, retain:

11           **2.5.1** all claims for enforcement of the Settlement Agreement and the Settlement Act  
12 pursuant to the terms of the Settlement Agreement and the Settlement Act;

13           **2.5.2** all rights to use and protect any Nation water right recognized by or established  
14 pursuant to Section 7, including the right to assert claims for injuries relating to such right and  
15 the right to participate in any stream adjudication, including any *inter se* proceeding;

16           **2.5.3** all claims relating to activities affecting the quality of water that are not waived at  
17 Section 2.1.1.5 or 2.2.1.5, including any claims the Nations may have under:

18           **2.5.3.1**       the Comprehensive Environmental Response, Compensation, and  
19 Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), including for damages to natural resources;

20           **2.5.3.2**       the Safe Drinking Water Act (42 U.S.C. § 300f, *et seq.*);

21           **2.5.3.3**       the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); and

22           **2.5.3.4**       any regulations implementing the Acts described in Section 2.5.3;

1           **2.5.4** all claims relating to damage, loss, or injury resulting from a person’s  
2 unauthorized diversion, use, or storage of water, including damages, losses, or injuries to land or  
3 non-water natural resources associated with any hunting, fishing, gathering, or cultural right; and

4           **2.5.5** all rights, remedies, privileges, immunities, and powers not specifically waived  
5 and released pursuant to the Settlement Act or Sections 2.1 or 2.2.

6           **2.6 Nations’ Non-Objection to Amended Permit Application** – In return for the  
7 bargained-for exchange of benefits in the Settlement Agreement and upon the Enactment Date or  
8 the date on which the City has provided written notice pursuant to Section 6.2.2.7, whichever  
9 occurs first, the Nations:

10           **2.6.1** Shall not object to the OWRB’s proceeding, in accord with state law and subject  
11 to the Settlement Agreement, with public notice and hearing on the City’s Amended Permit  
12 Application;

13           **2.6.2** Shall not seek or support the imposition by the OWRB of any terms and  
14 conditions on the storage, release from storage, diversion, and use of water under the City Permit  
15 other than terms and conditions consistent with the provisions of Section 6.1; and

16           **2.6.3** Shall not object to the OWRB’s issuance of the City Permit, in accord with state  
17 law and subject to the Settlement Agreement, that contains terms and conditions consistent with  
18 the provisions of Section 6.1.

19           **2.7 Nations’ Non-Objection in Other Proceedings** – In return for the bargained-for  
20 exchange of benefits in the Settlement Agreement and upon the Enforceability Date, the Nations:

21           **2.7.1** Shall not object to local, state, or federal agencies proceeding, in accord with  
22 applicable law and subject to the Settlement Agreement, with any public notice, hearing or  
23 procedure for any permits or approvals for the storage, release from storage, diversion, and use

1 of water, including the Parallel Pipeline, that are necessary for the City’s beneficial use and  
2 delivery of water to its customers consistent with the provisions of Section 6;

3 **2.7.2** Shall not seek or support the imposition by local, state, or federal agencies of any  
4 terms and conditions on any permits or approvals for the storage, release from storage, diversion,  
5 and use of water, including the Parallel Pipeline, that are necessary for the City’s beneficial use  
6 and delivery of water consistent with the provisions of Section 6 other than terms and conditions  
7 consistent with the Settlement Agreement; and

8 **2.7.3** Shall not object to issuance of any local, state, or federal agency permits or  
9 approvals, in accord with applicable law and subject to the Settlement Agreement, for the  
10 storage, release from storage, diversion, and use of water, including the Parallel Pipeline, that are  
11 necessary for the City’s beneficial use and delivery of water consistent with the provisions of  
12 Section 6.

13 **3. LIMITED WAIVERS OF SOVEREIGN IMMUNITY AND CONSENTS TO SUIT**

14 **3.1 In General** – The purpose of these limited waivers of sovereign immunity is to  
15 induce each Party to enter into the Settlement Agreement and to allow each Party to seek  
16 interpretation or enforcement of the rights and obligations arising under or related to the  
17 Settlement Agreement or the Settlement Act that each Party may have against each other Party.

18 All Parties understand that no other Party would enter into the Settlement Agreement without the  
19 limited waivers provided herein.

20 **3.2 Limited Waivers of Sovereign Immunity and Consents to Suit** – Effective upon  
21 and after the Enforceability Date, in the case of any action to interpret or enforce the Settlement  
22 Agreement or Settlement Act:

1           **3.2.1** For the exclusive benefit of the State (inclusive of the OWRB), the City, the  
2 Trust, the Choctaw Nation, and the United States, the Chickasaw Nation expressly and  
3 irrevocably consents to suit and waives its sovereign immunity from suit solely for any action of  
4 any kind brought in the United States District Court for the Western District of Oklahoma  
5 relating to interpretation or enforcement of the Settlement Agreement or Settlement Act, which  
6 action is brought by the State and/or the OWRB, the City, the Trust, the Choctaw Nation, or the  
7 United States, inclusive of the appellate jurisdiction of the United States Court of Appeals for the  
8 Tenth Circuit and the United States Supreme Court.

9           **3.2.2** For the exclusive benefit of the State (inclusive of the OWRB), the City, the  
10 Trust, the Chickasaw Nation, and the United States, the Choctaw Nation expressly and  
11 irrevocably consents to suit and waives its sovereign immunity from suit solely for any action of  
12 any kind brought in the United States District Court for the Western District of Oklahoma  
13 relating to interpretation or enforcement of the Settlement Agreement or Settlement Act, which  
14 action is brought by the State and/or the OWRB, the City, the Trust, the Chickasaw Nation, or  
15 the United States, inclusive of the appellate jurisdiction of the United States Court of Appeals for  
16 the Tenth Circuit and the United States Supreme Court.

17           **3.2.3** For the exclusive benefit of the City, the Trust, the Choctaw Nation, the  
18 Chickasaw Nation, and the United States, the State (inclusive of the OWRB) expressly and  
19 irrevocably consents to suit, waives its sovereign immunity from suit, and agrees not to raise the  
20 Eleventh Amendment to the United States Constitution or comparable defense to the validity of  
21 such consent or waiver solely for any action of any kind brought in the United States District  
22 Court for the Western District of Oklahoma relating to interpretation or enforcement of the  
23 Settlement Agreement or Settlement Act, which action is brought by the Chickasaw Nation, the

1 Choctaw Nation, the City, the Trust, or the United States, inclusive of the appellate jurisdiction  
2 of the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court.

3 **3.2.4** Exclusively for the benefit of an Allottee who files an action pursuant to Sections  
4 8.4 or 8.5 in the United States District Court for the Western District of Oklahoma, the OWRB  
5 expressly and irrevocably consents to suit, waives its sovereign immunity from suit, and agrees  
6 not to raise the Eleventh Amendment to the United States Constitution or comparable defense to  
7 the validity of such consent or waiver, inclusive of the appellate jurisdiction of the United States  
8 Court of Appeals for the Tenth Circuit and the United States Supreme Court.

9 **3.2.5** For the exclusive benefit of the State (inclusive of the OWRB), the City, the  
10 Trust, the Chickasaw Nation, and the Choctaw Nation, the United States expressly and  
11 irrevocably consents to suit and waives its sovereign immunity from suit solely for any action of  
12 any kind brought in the United States District Court for the Western District of Oklahoma  
13 relating to interpretation or enforcement of the Settlement Agreement or Settlement Act, which  
14 action is brought by the State and/or the OWRB, the City, the Trust, the Chickasaw Nation, or  
15 the Choctaw Nation, inclusive of the appellate jurisdiction of the United States Court of Appeals  
16 for the Tenth Circuit and the United States Supreme Court.

17 **3.3 No Damages** – Nothing herein authorizes any money judgment against the United  
18 States, Nations, or State or otherwise serves as a basis for money damages.

19 **3.4 No Exhaustion; Exclusive Forum** – Each Party further waives and shall not invoke  
20 inconvenient forum or any exhaustion doctrine, including the doctrines of tribal exhaustion,  
21 exhaustion of administrative remedies, as a prerequisite for any other Party’s bringing an action  
22 under Section 10. All parties agree that the United States District Court for the Western District  
23 of Oklahoma shall be the exclusive forum for all suits relating to or arising under the Settlement

1 Agreement or the Settlement Act and that no Party shall bring such action in any state, tribal, or  
2 other federal court or administrative forum.

3 **3.5 Statutory Waivers and Consents**

4 **3.5.1 United States** – The Settlement Legislation shall provide the United States’  
5 express and irrevocable consent to suit and waiver of immunity consistent with the waivers of  
6 immunity and consents to suit provided by the Parties, each on their own behalf, in the  
7 Settlement Agreement.

8 **3.5.2 Nations** – The Settlement Legislation shall provide for waiver of the Nations’  
9 sovereign immunity from suit in a manner and form consistent with the waivers of immunity and  
10 consents to suit the Nations provided, each on their own behalf, in the Settlement Agreement.

11 **4. CONDITIONS PRECEDENT TO ENFORCEABILITY**

12 **4.1 In General** – The Settlement Agreement shall become enforceable on the date on  
13 which all of the following conditions precedent have been satisfied:

14 **4.1.1 Enactment Date** – federal legislation that includes those terms necessary to  
15 secure implementation, enforceability, and federal approval of the Settlement Agreement and  
16 substantially conforms with Exhibit 2 is an enacted federal public law;

17 **4.1.2 Post-Enactment Execution Date** – the United States, the Nations, the State, the  
18 OWRB, the City, and the Trust have executed the Settlement Agreement or Revised Settlement  
19 Agreement;

20 **4.1.3 Execution of Waivers and Releases of Claims** – the United States and the  
21 Nations have executed waivers of claims that substantially conform with Exhibits 5 and 6;



1           **4.1.4 Amended Storage Contract Transfer Agreement** – the State, City, and Trust  
2 have executed, and the Secretary of the United States Army has approved, an Amended Storage  
3 Contract Transfer Agreement that substantially conforms with Exhibit 4;

4           **4.1.5 Modification of September 11, 2009, Court Order** – the State and the United  
5 States have obtained, pursuant to a motion and proposed order that substantially conform with  
6 Exhibit 7, any modifications to the September 11, 2009, order in *United States v. Oklahoma*  
7 *Water Resources Board*, CIV 98-00521 (N.D. Ok.);

8           **4.1.6 City Permit** – the OWRB has issued to the City a final permit, as that term is  
9 used in Section 6.2.3.3, that conforms with Section 6.1;

10           **4.1.7 Model Documentation** – the documentation of the Kiamichi Basin Hydrologic  
11 Model is on file at the OWRB’s Oklahoma City offices;

12           **4.1.8 Atoka and Sardis Conservation Projects Fund** – the State, City, and Nations  
13 have funded the Atoka and Sardis Conservation Projects Fund in accord with Section 6.5.2.1.2;

14           **4.1.9 Dismissal of *Chickasaw Nation and Choctaw Nation v. Fallin, et al.*** – the  
15 Nations, the State, and the City have jointly moved for and the court has entered an order of  
16 dismissal in *Chickasaw Nation and Choctaw Nation v. Fallin, et al.*, CIV. 11-927 (W.D. Ok.),  
17 which motion and order shall substantially conform with Exhibit 8;

18           **4.1.10 Dismissal of *OWRB v. United States, et al.*** – the OWRB has moved for and the  
19 court has entered an order of dismissal in *OWRB v. United States, et al.* CIV 12-275 (W.D. Ok.),  
20 which motion and order shall substantially conform with Exhibit 9;

21           **4.1.11 Notice of Satisfaction of Conditions Precedent** – the State, City, and Nations  
22 have jointly notified the Secretary of the United States Department of the Interior that the

1 conditions specified in Sections 4.1.1 through 4.1.10 have been satisfied, which notification shall  
2 include documentation sufficient for purposes of certification pursuant to Section 4.2; and

3 **4.1.12 Publication of Certification** – the Secretary of the United States Department of  
4 the Interior has published the certification required by Section 4.2.

5 **4.2 Certification** – The Settlement Legislation shall provide that upon completion of all  
6 of the conditions specified at Sections 4.1.1 through 4.1.11, the Secretary of the United States  
7 Department of the Interior shall publish in the Federal Register a certification stating that such  
8 conditions have been satisfied.

9 **5. GENERAL PROVISIONS**

10 **5.1 State Jurisdiction** – The State has and shall exercise, through the OWRB,  
11 jurisdiction over the permitting and administration of water and rights to water within the  
12 Settlement Area.

13 **5.2 Future OWRB Rulemakings** – If the OWRB proposes a new rule or an amendment  
14 to a rule in effect as of the Execution Date that affects the permitting or administration of  
15 Settlement Area Waters, the Nations or either Nation may review and comment on the proposed  
16 rule or amendment to the OWRB, which comment the Nations or either Nation shall submit in  
17 the form and through the process provided by state law. Prior to the OWRB’s finalization of the  
18 proposed rule or amendment, the OWRB shall provide the commenting Nation or Nations  
19 opportunity to meet and confer with OWRB staff regarding any comments submitted by a Nation  
20 or the Nations. Nothing herein expands or limits the rights any Party has for the interpretation or  
21 enforcement of the Settlement Agreement pursuant to Section 10 and the Settlement Act.

22

1        **5.3     Permitting, Allocation, and Administration**

2            **5.3.1   In General** – The OWRB shall process all applications submitted to it for permits  
3 to appropriate surface water from a Settlement Area Hydrologic Basin filed on or after the  
4 Enforceability Date pursuant to state law, consistent with the Settlement Agreement and the  
5 Settlement Act. The OWRB shall process the Amended Permit Application pursuant to Section  
6 6.2.

7            **5.3.1.1     Basin Classification and Conferral Threshold**

8            **5.3.1.1.1     Water Basin Classifications**

9            **5.3.1.1.1.1     Class A Basins** – For purposes of the Settlement Agreement,  
10 Class A Basins are the following Settlement Area Hydrologic Basins, as depicted in Exhibit 10:  
11 Basin 23 (commonly referred to as the Mud Creek), Basins 7 and 8 (commonly referred to as the  
12 Muddy Boggy), Basins 44 and 45 (commonly referred to as the Poteau), Basins 1, 10, 13, and 21  
13 (commonly referred as the Red River Mainstem), Basin 2 (commonly referred to as the Little),  
14 Basin 15 (commonly referred to as the Middle Washita ), Basin 22 (commonly referred to as the  
15 Walnut Bayou), and Basin 57 (commonly referred to as the Lower Canadian ).

16            **5.3.1.1.1.2     Class B Basins** – For purposes of the Settlement Agreement,  
17 Class B Basins are those Settlement Area Hydrologic Basins that contain surface streams of  
18 significant cultural, ecological or recreational values within the Settlement Area, which are the  
19 following Settlement Area Hydrologic Basins, as depicted in Exhibit 10: Basins 11 and 12  
20 (commonly referred to as the Blue), Basin 9 (commonly referred to as the Clear Boggy), Basins  
21 5 and 6 (commonly referred to as the Kiamichi), Basin 14 (commonly referred to as the Lower  
22 Washita), Basin 4 (commonly referred to as the Mountain Fork), and Basin 3 (commonly  
23 referred to as the Upper Little).

1                   **5.3.1.1.1.3 Class C Basins** – Class C Basins are those Settlement Area  
2 Hydrologic Basins that lie partially within the Settlement Area, which are the following  
3 Settlement Area Hydrologic Basins, as depicted in Exhibit 10: Basins 24, 25, and 26 (commonly  
4 referred to as the Beaver Creek), Basins 46 and 47 (commonly referred to as the Lower  
5 Arkansas), Basins 48 and 56 (commonly referred to as the Lower Canadian ), Basin 58  
6 (commonly referred to as the Middle Canadian), and Basin 16 (commonly referred to as the  
7 Middle Washita ).

8                   **5.3.1.1.2 Conferral Threshold** – The process specified at Section 5.3.1.2  
9 shall be a precondition to OWRB consideration of those applications that satisfy the following  
10 conditions:

11                   **5.3.1.1.2.1 Class A Basin** – An application to appropriate water for use at  
12 a location outside of the Settlement Area in an amount that is five percent (5%) or more of the  
13 Mean Available Flow in a Class A Basin. Applications filed for an appropriation from the same  
14 point of diversion for use outside of the Settlement Area filed within any twelve (12) month  
15 period which collectively equal or exceed five percent (5%) of the Mean Available Flow shall be  
16 subject to the conferral threshold even if individually each application would not exceed five  
17 percent (5%) of the Mean Available Flow.

18                   **5.3.1.1.2.2 Class B Basin** – An application to appropriate water for use at  
19 a location outside of the source basin in an amount that is more than either twenty thousand  
20 (20,000) AFY or three percent (3%) of the Mean Available Flow, whichever is less, in a Class B  
21 Basin. Applications filed for an appropriation from the same point of diversion for use outside of  
22 the source basin filed within any twenty four (24) month period which collectively equal or  
23 exceed twenty thousand (20,000) AFY or three percent (3%) of the Mean Available Flow,

1 whichever is less, shall be subject to the conferral threshold even if individually each application  
2 would not exceed twenty thousand (20,000) AFY or three percent (3%) of the Mean Available  
3 Flow, whichever is less.

4 **5.3.1.1.2.3 Class C Basin** – An application to appropriate water for use at  
5 a location outside of the source basin and the Settlement Area in an amount that is ten percent  
6 (10%) or more of the Mean Available Flow in a Class C Basin. Applications filed for an  
7 appropriation from the same point of diversion for use outside of the Settlement Area filed  
8 within any twelve (12) month period which collectively equal or exceed ten percent (10%) of the  
9 Mean Available Flow shall be subject to the conferral threshold even if individually each  
10 application would not exceed ten percent (10%) of the Mean Available Flow.

11 **5.3.1.1.2.4 No Avoidance** – In processing applications to appropriate  
12 water from a Settlement Area Hydrologic Basin, the OWRB shall evaluate and determine  
13 whether any applicant has or applicants have structured and submitted an application or  
14 applications in a manner to attempt to avoid a conferral threshold specified in Sections  
15 5.3.1.1.2.1, 5.3.1.1.2.2, or 5.3.1.1.2.3. If the OWRB determines an application has or applications  
16 have been structured and submitted to avoid a conferral threshold, the OWRB shall process the  
17 application or applications in such a manner as having satisfied the relevant conferral threshold,  
18 even if individually each application would not have done so.

19 **5.3.1.2 Conferral and Modeling**

20 **5.3.1.2.1 Technical Committee** – No later than ninety (90) days from the  
21 Enactment Date, the State and the Nations shall establish the Technical Committee. The  
22 Technical Committee shall be comprised of two (2) members, one (1) member for the Nations  
23 and one (1) member for the State. The City may also appoint one (1) member to the Technical

1 Committee with respect to any work performed pursuant to Section 5.3.1.2 relating to the  
2 Kiamichi Basin.

3 **5.3.1.2.1.1 Appointment of Members** – Technical Committee members  
4 shall be appointed and serve at the discretion of the appointing entities and must have expertise  
5 relevant to the purposes of the Technical Committee. Each appointing entity shall provide notice  
6 to the other entities as to who shall serve as its member; for purposes of this Section 5.3.1.2.1.1,  
7 the Nations and the City shall provide notice to the OWRB.

8 **5.3.1.2.1.1.1** Failure of any Party to appoint a Technical Committee  
9 Member shall not constitute a breach of the Settlement Agreement.

10 **5.3.1.2.1.1.2** Any Party’s failure to appoint a Technical Committee  
11 Member shall not preclude or excuse the OWRB from performing its functions under Section  
12 5.3.1.2 or 5.3.1.3.

13 **5.3.1.2.1.2 Performance of Modeling Work**

14 **5.3.1.2.1.2.1** Each Party shall support its respective Technical  
15 Committee member with such resources and expertise as are necessary and appropriate for the  
16 completion of the Technical Committee’s work. Members shall endeavor to achieve consensus  
17 regarding work to be performed. Any documentation of the Technical Committee’s work shall be  
18 maintained in electronic format at the OWRB as a public record.

19 **5.3.1.2.1.2.2** The OWRB shall provide all members of the Technical  
20 Committee full and equal access to any model (including all information relevant to its proper  
21 use) that is subject to evaluation, refinement, or development under Section 5.3.1.2.

1                           **5.3.1.2.1.2.3**       The OWRB and the Technical Committee may use all  
2 resources available to them for purposes of evaluating, refining, or developing a model,  
3 including but not limited to information from the applicant.

4                           **5.3.1.2.2       Adequate Model** – The OWRB may determine a model is  
5 adequate for purposes of Sections 5.3.1.2.2, 5.3.1.2.5, and 5.3.1.3 if it includes, at a minimum,  
6 the model inputs identified at Section 5.3.1.2.3 and the model has been calibrated for purposes of  
7 evaluating the following:

8                           **5.3.1.2.2.1**       Whether water is available at the proposed point of diversion  
9 based on the Mean Available Flow and what may be required for projected beneficial use within  
10 the basin and, to the extent applicable pursuant to Section 5.3.1.1.2.2, any water quality,  
11 ecological, and recreational needs evaluated in a manner consistent with OAC § 785:20-5-5(e);  
12 and

13                           **5.3.1.2.2.2**       Whether a proposed use would interfere with existing  
14 beneficial uses of water.

15                           **5.3.1.2.3       Model Inputs** – An Adequate Hydrologic Model shall include, at a  
16 minimum, the following inputs:

17                           **5.3.1.2.3.1**       Existing water rights in the basin as of the date of the  
18 application, including permitted appropriative uses, vested rights, any surface water uses  
19 developed by either Nation pursuant to Section 7.7, domestic use set aside calculated based on  
20 the OWRB numerical assumption of six (6) AFY per one hundred sixty (160) acres within the  
21 basin upstream of the proposed point of diversion and twenty four (24) AFY for each linear mile  
22 downstream of the proposed point of diversion, any surface water right recognized pursuant to  
23 Section 8, and any pending application;

1                   **5.3.1.2.3.2**     Quantity of flow necessary to fulfill obligations under  
2 apportionment provisions of interstate stream compacts to which the State is a party as calculated  
3 by any rules developed by any applicable compact commission;

4                   **5.3.1.2.3.3**     For those applications that satisfy the conferral threshold  
5 provided at Section 5.3.1.1.2.2, the quantity of flow sufficient to satisfy water quality, ecological,  
6 and recreational needs evaluated in a manner consistent with OAC § 785:20-5-5(e) using the  
7 United States Geological Survey’s seven (7) day average low flow of the stream with a fifty  
8 percent (50%) occurrence probability (seven day, two-year low flow or 7Q2) for the entire  
9 period of record and any other basin-specific data.

10                  **5.3.1.2.3.4**     Projected total in-basin demands using a minimum fifty (50)  
11 year time frame and calculated for:

12                   **5.3.1.2.3.4.1**     Population-based demands using the methodology  
13 relied on in the latest update to the Oklahoma Comprehensive Water Plan or a standard  
14 methodology that is widely accepted for demographic planning purposes and which is  
15 appropriate based on all local considerations regarding water that may be required for in-basin  
16 beneficial uses; and

17                   **5.3.1.2.3.4.2**     Non-population-based demands using information  
18 included in and methodology relied on in the latest update to the Oklahoma Comprehensive  
19 Water Plan or a standard methodology that is widely accepted for planning purposes and which  
20 is appropriate based on all local considerations regarding water that may be required for in-basin  
21 beneficial uses.

22                   **5.3.1.2.3.5**     Measured or synthesized data sufficient to simulate basin  
23 hydrology, including reservoir characteristics (*e.g.*, yield, area-capacity, normal storage,



1 authorized purposes, date of construction, evaporation, sedimentation, release schedules and  
2 other operational requirements) and seasonal flow variability, using the entire period of record,  
3 except for those data which diminish statistical confidence.

4 **5.3.1.2.4 Notice** – Prior to approving a proposed publication notice for a  
5 permit application that satisfies any of the conferral thresholds set forth in Section 5.3.1.1.2, the  
6 OWRB shall:

7 **5.3.1.2.4.1** notify the Nations and each Technical Committee member in  
8 writing of such application, which notice will include a complete copy of the application and a  
9 description of any model for the relevant basin that the OWRB previously determined to be an  
10 Adequate Hydrologic Model under Section 5.3.1.2.5 and describing updates, if any, to such  
11 model since it was determined to be an Adequate Hydrologic Model; and

12 **5.3.1.2.4.2** confer with the Technical Committee regarding any  
13 information provided pursuant to Section 5.3.1.2.4.1 and inform the Technical Committee of the  
14 OWRB’s preliminary assessment of any available hydrologic models.

15 **5.3.1.2.5 Determination** – The OWRB shall determine whether an  
16 Adequate Hydrologic Model is available to it, including models that have been refined or  
17 developed under Section 5.3.1.2.5.4. In making such determination, the OWRB shall:

18 **5.3.1.2.5.1** Assess models that the OWRB has access to for the basin from  
19 which the waters are proposed to be appropriated, including any model previously determined to  
20 be an Adequate Hydrologic Model and any updates thereto.

21 **5.3.1.2.5.2** If the OWRB determines an Adequate Hydrologic Model is  
22 available to it, it shall notify the Technical Committee of such determination and then process the  
23 application pursuant to Section 5.3.1.3.

1                   **5.3.1.2.5.3**     If the OWRB determines that an Adequate Hydrologic Model  
2 is not available to it, it shall proceed in accord with Section 5.3.1.2.5.4.

3                   **5.3.1.2.5.4**     If the OWRB determines an Adequate Hydrologic Model is not  
4 available to it, the OWRB shall notify the Technical Committee of such determination and direct  
5 the Technical Committee either refine an existing hydrologic model or develop a new model so  
6 that it is an Adequate Hydrologic Model. The Technical Committee shall complete its model  
7 refinement or development work within one hundred and eighty (180) days of the notification  
8 pursuant to Section 5.3.1.2.5.2, after which the OWRB may either: (i) give the Technical  
9 Committee additional time or (ii) complete the model refinement or development. Once work on  
10 the model is completed, the OWRB shall proceed with its determination under Section 5.3.1.2.5.

11                   **5.3.1.2.5.5**     The OWRB shall exercise its discretion in making  
12 determinations under Section 5.3.1.2.5. In making its determinations, OWRB must ensure that a  
13 model satisfies the criteria provided at Section 5.3.1.2.2. The OWRB shall provide the Technical  
14 Committee with written documentation of its determination.

15                   **5.3.1.2.5.6**     Subsequent to the Enforceability Date, if the conferral  
16 threshold of Section 5.3.1.1.2.2 is satisfied with respect to an application to appropriate water  
17 from the Kiamichi Basin, the Kiamichi Basin Hydrologic Model shall be the starting point for  
18 OWRB’s determination under Section 5.3.1.2.5.

19                   **5.3.1.2.5.7**     Once a model is determined adequate under Section 5.3.1.2.5,  
20 the OWRB shall use it for purposes of allocation of water and administration of water rights  
21 within the relevant basin. The Kiamichi Basin Hydrologic Model, including any updates, shall be  
22 used for the allocation of water and administration of water rights in the Kiamichi Basin.

23

1                   **5.3.1.3       Permit Application Processing**

2                   **5.3.1.3.1       Hydrologic Findings** – In reliance on an Adequate Hydrologic  
3 Model, the OWRB will process an application subject to Section 5.3.1.3 under Title 82 and  
4 OWRB rules and regulations and make written findings on the following as part of its final  
5 decision:

6                   **5.3.1.3.1.1**       That the applicant’s proposed diversions of water would not  
7 interfere with existing water rights in the source basin;

8                   **5.3.1.3.1.2**       That the applicant’s proposed diversion of water would not  
9 interfere with projected future consumptive-use water needs within the source basin; and

10                  **5.3.1.3.1.3**       For those applications that satisfy the conferral threshold  
11 provided at Section 5.3.1.1.2.2 or which have satisfied the requirements of Section 5.3.3, that  
12 existing water quality, ecological, and recreational needs evaluated in a manner consistent with  
13 OAC § 785:20-5-5(e) would be protected in approving the applicant’s proposed diversion of  
14 water.

15                  **5.3.1.3.2       Applicant’s Use and Demand Findings** – Using the evidence  
16 tendered in administrative proceedings on the application in addition to relevant data included in  
17 the most recent update to the Oklahoma Comprehensive Water Plan, OWRB will process the  
18 application under Title 82 and OWRB rules and regulations and make written findings on the  
19 following as part of its final decision:

20                  **5.3.1.3.2.1**       That the applicant has demonstrated it has a need for the water  
21 requested for appropriation within a reasonable period of time but not longer than seven (7) years  
22 or as set forth in a schedule of use that is supported by any findings required by state law; and

1                   **5.3.1.3.2.2**     That the applicant has demonstrated the works intended for the  
2 delivery of the water are feasible and capable of efficient delivery of the water requested for  
3 appropriation without committing waste.

4                   **5.3.1.3.3     Permit Issuance** – The OWRB may issue a permit if it has made  
5 affirmative conclusions supported by the record on each of the findings specified in Sections  
6 5.3.1.3.1 and 5.3.1.3.2.

7                   **5.3.1.4     No Modification of Rights** – Nothing herein modifies in any way the  
8 rights available to any person pursuant to state law to participate in OWRB proceedings and to  
9 appeal from decisions based thereon.

10                   **5.3.2   Arbuckle-Simpson Groundwater Basin**

11                   **5.3.2.1     In General** – The Arbuckle-Simpson Groundwater Basin is located in a  
12 region of significant historic, cultural, economic and environmental value to the State and the  
13 Nations and has been the subject of substantive engagement and cooperative efforts among the  
14 Nations and the OWRB. The Arbuckle-Simpson Groundwater Basin is classified as a sensitive  
15 sole source aquifer, and 82 O.S. § 1020.9A requires consideration and protection of the natural  
16 flow of springs and streams emanating from the Arbuckle-Simpson Groundwater Basin. OWRB  
17 shall administer the Arbuckle-Simpson Groundwater Basin in accord with 82 O.S. §§ 1020.9 and  
18 1020.9A, the Settlement Agreement, and the Settlement Act.

19                   **5.3.2.2     Maximum Annual Yield and Administration** – The OWRB shall  
20 consider all applications for the Arbuckle Simpson Groundwater Basin pursuant to 82 O.S. §§  
21 1020.9A and 1020.9 in accord with Section 5.3.2. In accord with Title 82, the OWRB has  
22 developed a maximum annual yield (“MAY”) for the Arbuckle Simpson Groundwater Basin, *see*  
23 Maximum Annual Yield for the Arbuckle-Simpson Groundwater Basin, Oklahoma Water

1 Resources Board (Findings of Fact, Conclusions of Law, and Board Order, Oct. 23, 2013)  
2 (“2013 Order”). OWRB shall administer the Arbuckle Simpson Groundwater Basin in accord  
3 with Title 82 and the 2013 Order; *provided that* if a court of competent jurisdiction modifies or  
4 otherwise determines the 2013 Order is invalid, OWRB shall develop a new MAY and either  
5 issue a new MAY order or modify the 2013 Order in conformance with 82 O.S. §§ 1020.9 and  
6 1020.9A and any applicable court order (“MAY Order”), and administer the Arbuckle Simpson  
7 Groundwater Basin pursuant to such MAY Order. Any order establishing a MAY for the  
8 Arbuckle Simpson Groundwater Basin and OWRB administration thereunder shall ensure that  
9 any groundwater permit issued by the OWRB will not reduce the natural flow of water from  
10 springs or streams emanating from the Arbuckle Simpson Groundwater Basin.

11 **5.3.2.3 Applications for Groundwater** – The OWRB shall evaluate any  
12 regular permit to use groundwater from the Arbuckle-Simpson Groundwater Basin in accord  
13 with the MAY Order and shall approve the permit if it finds that:

14 **5.3.2.3.1** The lands owned or leased by the applicant overlie the Arbuckle  
15 Simpson Groundwater Basin;

16 **5.3.2.3.2** The use to which the applicant intends to put the water is  
17 beneficial;

18 **5.3.2.3.3** The proposed use does not constitute waste as defined in 82 O.S. §  
19 1020.15; and

20 **5.3.2.3.4** The proposed use is not likely to degrade or interfere with springs  
21 or streams emanating in whole or in part from water originating from the Arbuckle Simpson  
22 Groundwater Basin.

23

1           **5.3.3 Out-of-State Use of Settlement Area Waters**

2           **5.3.3.1 In General** – The Parties recognize and agree that, as of the Execution  
3 Date, state law prohibits any Out-of-State Use of Settlement Area Waters. Nothing in the  
4 Settlement Agreement changes such state law or otherwise permits or authorizes such use. Any  
5 Out-of-State Use of Settlement Area Waters shall be in accord with the Settlement Agreement,  
6 the Settlement Act, and any state law not inconsistent herewith.

7           **5.3.3.2 Settlement Commission**

8           **5.3.3.2.1 Establishment** – The Settlement Legislation shall establish the  
9 Settlement Commission, the duties and authority of which are defined and limited by the  
10 Settlement Agreement and the Settlement Act.

11           **5.3.3.2.2 Members** – The Settlement Commission shall be comprised of  
12 five (5) members, appointed as follows: (i) one by the Governor of the State; (ii) one by the  
13 Attorney General of the State; (iii) one by the Chief of the Choctaw Nation; (iv) one by the  
14 Governor of the Chickasaw Nation; and (v) one by agreement of the aforementioned four  
15 members. In the event the four aforementioned members cannot agree on a single person, they  
16 shall jointly submit a list of no fewer than three (3) names to the Chief Judge for the United  
17 States District Court for the Eastern District of Oklahoma, who shall then make the appointment  
18 from that list. The initial appointments to the Settlement Commission shall be made within  
19 ninety (90) days of the Enforceability Date.

20           **5.3.3.2.3 Member Terms** – Settlement Commission members shall serve at  
21 the pleasure of their respective appointing entity. Appointing entities may reimburse their  
22 respective appointed members for costs associated with their service on the Settlement  
23 Commission, and the fifth member shall have their costs associated with service on the

1 Settlement Commission reimbursed by the State and the Nations. No member shall receive  
2 compensation for service on the Settlement Commission. In the event of a Settlement  
3 Commission member's removal or resignation, that member's original appointing entity shall  
4 name a replacement. The fifth member may be removed or replaced by a majority vote of the  
5 other members based on a failure of the member to carry out their duties as a member of the  
6 Commission.

7 **5.3.3.2.4 Duties** – The Settlement Commission's duties shall be as follows:

8 **5.3.3.2.4.1 Evaluation** – to evaluate any proposed Out-of-State Use of  
9 Settlement Area Waters in accord with Section 5.3.3.3.2;

10 **5.3.3.2.4.2 Report** – to prepare, finalize, and submit a report in accord  
11 with Section 5.3.3.3.3, which report shall document the Settlement Commission's evaluation of  
12 those matters indicated in Section 5.3.3.3.2 and such other relevant issues presented by the  
13 proposed Out-of-State Use of Settlement Area Waters;

14 **5.3.3.2.4.3 Appeals from Denials of Funding for Settlement Area**  
15 **Projects** – to hear and decide appeals submitted to it pursuant to Section 5.3.3.5.2.5; and

16 **5.3.3.2.4.4 Internal Procedures** – to establish such procedures as are  
17 necessary for purposes of the Settlement Commission's operation and performance of the duties  
18 set forth in Section 5.3.3.

19 **5.3.3.3 Proposal Evaluation; Report**

20 **5.3.3.3.1 Proposal** – Any person proposing an Out-of-State Use of  
21 Settlement Area Waters shall submit a proposal to the Settlement Commission for evaluation, a  
22 copy of which the Settlement Commission shall provide to the OWRB.

1                   **5.3.3.3.2       Evaluation** – In performing its evaluation of a proposal, the  
2 Settlement Commission may consider all available information, including, at a minimum: (i) the  
3 use to which the water will be placed; (ii) the feasibility of the works proposed for delivering  
4 water; (iii) the effect of the proposed use on water availability in the source basin and throughout  
5 Oklahoma; (iv) the likely environmental and economic impact of the proposed use on the source  
6 basin and Oklahoma; and (v) the appropriate valuation to be imposed as a condition of the  
7 proposed Out-of-State Use of Settlement Area Waters. To support the Settlement Commission’s  
8 performance of its duties under Section 5.3.3, the OWRB shall provide to the Settlement  
9 Commission a preliminary technical evaluation of the availability of water in the source basin,  
10 including permitted uses, any pending applications, and any other known, projected, or proposed  
11 water uses; *provided*, that such preliminary evaluation shall not prejudice or otherwise control  
12 any subsequent administrative processing of the proposed Out-of-State Use of Settlement Area  
13 Waters by the OWRB.

14                   **5.3.3.3.3       Report; Legislative Action** – The Settlement Commission’s  
15 evaluation shall be contained in a report that the Settlement Commission shall submit to the  
16 Speaker of the Oklahoma House of Representatives and the President *Pro Tem* of the Oklahoma  
17 Senate. The Oklahoma Legislature may consider and act on the Settlement Commission’s report  
18 as the Legislature deems appropriate.

19                   **5.3.3.3.4       Administrative Fees and Costs** – Any person proposing an Out-  
20 of-State Use of Settlement Area Waters shall pay those fees and costs associated with the  
21 Settlement Commission’s evaluation and preparation of its report. The Nations and State will  
22 coordinate to provide additional reasonable administrative support, including funding, to allow  
23 the Settlement Commission to fulfill its duties.



1                   **5.3.3.4       Applications for a Proposed Out-of-State Use of Settlement Area**

2   **Waters** – No Out-of-State Use of Settlement Area Waters shall be lawful unless and until such  
3   use is made pursuant to a validly issued OWRB permit. Once a proposed Out-of-State Use of  
4   Settlement Area Waters has been evaluated by the Settlement Commission and authorized by the  
5   Oklahoma Legislature, the person proposing such use shall submit to the OWRB an application  
6   for a water use permit, which application the OWRB shall process in accord with Section 5.3.1,  
7   including Sections 5.3.1.2 and 5.3.1.3, without regard to the amount proposed for appropriation  
8   and use. Any Out-of-State Use of Settlement Area Waters permitted by the OWRB shall be  
9   subject to State jurisdiction and administered by the OWRB in accord with the permit issued,  
10   state law, the Settlement Agreement, and the Settlement Act.

11                   **5.3.3.5       Water Preservation Infrastructure Fund**

12                   **5.3.3.5.1       Created** – Any monies paid relating to an Out-of-State Use of

13   Settlement Area Waters shall be deposited into the Water Preservation Infrastructure Fund,  
14   hereby created. The purpose of the Water Preservation Infrastructure Fund, inclusive of all  
15   monies deposited therein, shall be solely and exclusively to provide grants for the construction  
16   and maintenance of public water infrastructure throughout Oklahoma, including but not limited  
17   to public infrastructure for municipal and rural water supply, irrigation supply, and wastewater  
18   projects.

19                   **5.3.3.5.2       Administration of Water Preservation Infrastructure Fund**

20                   **5.3.3.5.2.1       Allocation and Disbursement** – Monies deposited pursuant to

21   Section 5.3.3.5.1 may only be allocated and disbursed in accord with the Settlement Agreement  
22   and the Settlement Act.

1                   **5.3.3.5.2.2 Administration of Fund** – The OWRB shall administer the  
2 Water Preservation Infrastructure Fund in accord with Section 5.3.3.5, the Settlement Act, and  
3 state law.

4                   **5.3.3.5.2.3 Consideration of Applications** – The OWRB shall consider  
5 applications for funding in the order in which such requests are received, with the exception of  
6 applications for funding for public water infrastructure projects located within or serving the  
7 Settlement Area which shall be considered prior to all others. In considering such applications  
8 for funding from the Water Preservation Infrastructure Fund, the OWRB shall apply the point  
9 system and procedures set forth in Exhibit 11.

10                   **5.3.3.5.2.4 Settlement Area Projects Priority** – As provided in Section 2  
11 of Exhibit 11, applications for funding for public water infrastructure projects located within or  
12 serving the Settlement Area shall receive an additional ten (10) points.

13                   **5.3.3.5.2.5 Appeal of Denial of Funding for Settlement Area Projects** –  
14 If the OWRB denies an application for funding for a public water infrastructure project located  
15 within or serving the Settlement Area, the aggrieved applicant may, within thirty (30) days,  
16 appeal the OWRB’s decision to the Settlement Commission, which shall determine whether the  
17 OWRB correctly applied the criteria of Section 5.3.3.5 (inclusive of Exhibit 11) including  
18 preferences for Settlement Area projects. If the Settlement Commission determines that the  
19 OWRB properly applied the criteria, the decision of the OWRB shall stand and be final, subject  
20 to the applicant’s right to reapply to the OWRB consistent with Exhibit 11. If the Settlement  
21 Commission determines the OWRB did not correctly apply the criteria of Section 5.3.3.5  
22 (inclusive of Exhibit 11), the application shall be remanded to the OWRB for reconsideration.

1 **6. PROVISIONS RELATING TO PENDING OWRB APPLICATION NO. 2007-017 –**

2 As provided in this Section 6, the Parties have agreed to provisions to enhance water availability  
3 for use within the Settlement Area, to support recreation, fish and wildlife needs, and to resolve  
4 the Nations’ objections to the OWRB’s consideration of the City’s Amended Permit Application.  
5 These provisions include Sardis Lake Release Restrictions, Bypass Flow Requirements, and City  
6 water conservation requirements to protect Sardis Lake recreation, fish and wildlife benefits; a  
7 set-aside of Conservation Storage Capacity for local use of the Administrative Set-Aside; and the  
8 Atoka and Sardis Conservation Projects Board.

9 **6.1 Amended Permit Application** – To facilitate the implementation of provisions  
10 referenced above, the City will file with the OWRB within one hundred twenty (120) days after  
11 the Execution Date the Amended Permit Application, which shall include the terms and  
12 conditions set forth in this Section 6.1:

13 **6.1.1 Scope** – that the permit provide a right: (i) to store Kiamichi Basin water in  
14 Sardis Lake consistent with the Amended Storage Contract Transfer Agreement; (ii) to release  
15 water from Sardis Lake for delivery to the Point of Diversion; and (iii) to divert and beneficially  
16 use water from the Kiamichi Basin.

17 **6.1.2 Amount of Appropriation** – that the permit provide a right to appropriate one  
18 hundred fifteen thousand (115,000) AFY and specify that water bypassed in accord with Section  
19 6.1.5.2 shall not be counted against the City’s one hundred fifteen thousand (115,000) AFY  
20 appropriation; *provided*, that the City’s compliance with the Bypass Requirement of Section  
21 6.1.5.2 shall not be grounds for finding any forfeiture of such appropriation.

22 **6.1.3 Point of Diversion** – that the permit specify a point of diversion from the  
23 Kiamichi River in the general vicinity of Moyers Crossing in Pushmataha County, Oklahoma.

1           **6.1.4 Sources** – that the permit provide that the sources of water shall be stream water  
2 from the Kiamichi River, water released from City Sardis Storage, or any combination thereof.

3           **6.1.5 City Diversion Rate, Bypass Requirement, and Flow Rate** – that the permit  
4 provide for:

5           **6.1.5.1**       a diversion rate of two hundred fifty (250) cfs;

6           **6.1.5.2**       a requirement that the City bypass fifty (50) cfs at the Point of Diversion  
7 as a precondition to diverting water; and

8           **6.1.5.3**       a flow rate of three hundred (300) cfs, which is the combined amount of  
9 the City Diversion Rate and the Bypass Requirement.

10          **6.1.6 Exercise of City Diversion Rate, Bypass Requirement, and Flow Rate** – that  
11 the permit provide:

12          **6.1.6.1**       that regardless of hydrological conditions, the City may divert water  
13 under the City Permit only when the full amount of the Bypass Requirement flows past the Point  
14 of Diversion;

15          **6.1.6.2**       that the City may divert natural flow to the extent the natural flow  
16 exceeds the Bypass Requirement at the Point of Diversion;

17          **6.1.6.3**       that the City may divert flows that result from City Sardis Storage  
18 releases to the extent that such releases in combination with any natural flow exceed the Bypass  
19 Requirement at the Point of Diversion; and

20          **6.1.6.4**       that the City provide to the OWRB an accounting of its releases from  
21 City Sardis Storage and measurement of its diversions and bypasses at the Point of Diversion.

22          **6.1.7 Purposes** – that the permit provide that the purposes for which water may be  
23 beneficially used shall be municipal use by the City, the City’s current and future wholesale and

1 retail water customers and other public water supply entities in Oklahoma, and incidental  
2 purposes in Sardis Lake for recreation, fish and wildlife benefits as necessary to exercise the  
3 City's one hundred fifteen thousand (115,000) AFY appropriation.

4 **6.1.8 Sardis Lake Release Restrictions** – that the permit provide that the City may not  
5 have water released from City Sardis Storage except in conformance with the terms and  
6 conditions of this Section 6.1.8, which terms and conditions shall be deemed to satisfy the  
7 requirements of OAC § 785:20-5-5(b)(3)(iv) for a lake level management plan; *provided*, that  
8 such release restrictions shall not restrict the City's right to divert natural flow from the Kiamichi  
9 Basin when the natural flow at the Point of Diversion exceeds fifty (50) cfs.

10 **6.1.8.1 Baseline Lake Levels** – Regardless of whether Drought Conditions exist  
11 and notwithstanding any other condition herein, the City, subject to the rights reserved to the  
12 United States under Article 1(c) of the 1974 Contract, shall be entitled to have water released  
13 from City Sardis Storage as follows:

14 **6.1.8.1.1** From April 1 through August 31, the City may have water released  
15 from City Sardis Storage whenever the Sardis Lake surface elevation is at or above 599' MSL;  
16 and

17 **6.1.8.1.2** From September 1 through March 31, the City may have water  
18 released from City Sardis Storage whenever the Sardis Lake surface elevation is at or above 595'  
19 MSL.

20 **6.1.8.2 Drought Withdrawals** – During Drought Conditions, the City may  
21 have water released from City Sardis Storage in amounts that cause the Sardis Lake surface  
22 elevation to drop below the Baseline Lake Levels in Section 6.1.8.1 only if it is implementing  
23 and enforcing the water conservation measures described in Exhibit 12 for all of its retail and

1 wholesale customers, inside and outside of the City’s municipal boundaries. The City Reservoir  
2 storage level triggers contained in Exhibit 12 are distinct from and intended to operate  
3 independently of the City Reservoir storage level triggers that are contained in the Settlement  
4 Agreement’s definitions of Moderate Drought Conditions, Advanced Drought Conditions, and  
5 Extreme Drought Conditions. The City may modify the water conservation measures described  
6 in Exhibit 12 with the prior written consent of the Nations, which consent shall not be  
7 unreasonably withheld, for: (i) procedural modifications that do not increase water use and (ii)  
8 changes in irrigation technology that enable different patterns of use without increasing annual  
9 irrigation demand. Nothing herein shall preclude the City from implementing water  
10 conservation measures more restrictive than those described in Exhibit 12; *provided*, that the  
11 Nations shall be given written notice of such measures prior to their implementation.

12 **6.1.8.2.1 Moderate Drought Withdrawals** – When Moderate Drought  
13 Conditions exist, the City may have water released from City Sardis Storage from July 5 through  
14 August 31 and lower the Sardis Lake surface elevation below the Baseline Lake Levels in  
15 Section 6.1.8.1 to the lake level of 597’ MSL.

16 **6.1.8.2.2 Advanced Drought Withdrawals** – When Advanced Drought  
17 Conditions exist, the City may have water released from City Sardis Storage and lower the Sardis  
18 Lake surface elevation below the Baseline Lake Levels in Section 6.1.8.1 to the lake level of  
19 592’ MSL.

20 **6.1.8.2.3 Extreme Drought Withdrawals** – When Extreme Drought  
21 Conditions exist, the City may have water released from City Sardis Storage and lower the Sardis  
22 Lake surface elevation below the Baseline Lake Levels in Section 6.1.8.1 to the lake level of  
23 589’ MSL.

1                   **6.1.8.2.4      Meet and Confer** – At least thirty (30) days prior to commencing  
2 Advanced Drought Withdrawals or Extreme Drought Withdrawals, the City shall provide notice  
3 to and offer to meet and confer with OWRB staff and the Nations. If either the OWRB or the  
4 Nations desire to meet, then as part of the conferral process: (i) the City will demonstrate that  
5 Advanced Drought Conditions or Extreme Drought Conditions exist, as applicable, and the  
6 appropriate water conservation measures in Exhibit 12 and water conservation program  
7 established pursuant to Section 6.5.1 are in effect; and (ii) the City and OWRB staff and the  
8 Nations will consider whether to commence discussions under Section 6.5.7.

9                   **6.1.8.3      Calculations and Measurement** – For purposes of Section 6.1.8 and  
10 determinations of relative Drought Conditions, as defined in Sections 1.4, 1.32, and 1.42, Live  
11 Storage Capacity shall be calculated follows:

12                   **6.1.8.3.1      Live Storage Capacity Calculation** – Live Storage Capacity shall  
13 be calculated as the volume of City Reservoir storage space between the top of the conservation  
14 pool and the specified lower elevation using the elevation-capacity relationship documented in  
15 Exhibit 13, as set forth in Table 1, unless otherwise agreed pursuant to Section 6.5.7. The  
16 cumulative amount of Live Storage Capacity for the City Reservoirs resulting from this  
17 calculation is four hundred seven thousand one hundred five (407,105) AF.

18                   **Table 1: City Reservoir Live Storage Capacity and Lake Elevations**

City Reservoir	Top Elev. (MSL)	Lower Elev. (MSL)	Max. Live Stor. Cap. (AF)	75% (MSL)	65% (MSL)	50% (MSL)
Atoka	590.0	550.0	107,940	n/a	n/a	n/a
Canton	1,615.4	1,596.5	68,023	n/a	n/a	n/a
Draper	1,191.0	1,145.0	72,195	1,183.10	1,179.50	1,173.70
Hefner	1,199.0	1,165.0	57,593	1,193.10	1,190.40	1,186.10
McGee	577.1	533.0	88,445	n/a	n/a	n/a
Overholser	1,241.5	1,231.8	12,909	n/a	n/a	n/a
<b>Total</b>			<b>407,105</b>			

19

1                   **6.1.8.3.2      Lake Elevation Measurement** – All lake elevations shall be  
2 determined in reference to official United States Army Corps of Engineer or United States  
3 Geological Survey measurements.

4                   **6.1.8.3.3      Accounting** – Accounting for the City Permit shall be in accord  
5 with the accounting memorandum included as Exhibit 13.

6                   **6.1.9      Schedule of Use** – that the permit provide a schedule of use as set forth in Exhibit  
7 14.

8                   **6.1.10      Exercise of City Permit** – that the permit provide that the City’s exercise of the  
9 City Permit shall be in accord with the City Permit terms, the Settlement Agreement, and the  
10 Settlement Act.

11           **6.2      OWRB Review of Amended Permit Application**

12                   **6.2.1      Evaluation of Application** – The OWRB shall evaluate the evidence submitted  
13 by the City and otherwise tendered by any interested party in the administrative proceeding held  
14 on the Amended Permit Application and use the Kiamichi Basin Hydrologic Model, as it exists  
15 as of the Execution Date, to determine pursuant to the applicable provisions of Title 785 of the  
16 Oklahoma Administrative Code and Title 82 whether the City Permit shall be issued. No permit  
17 may be issued that does not include those terms and conditions stated in Section 6.1.

18                   **6.2.2      Timing**

19                   **6.2.2.1      Commencement of OWRB Process; Issuance of Notice** – No later  
20 than thirty (30) days from the Enactment Date, the OWRB staff shall issue to the City a notice  
21 for publication (“Notice”) of the Amended Permit Application, which the City shall cause to be  
22 published in accord with Section 6.2.2 and OAC § 785:20-5-1.



1                   **6.2.2.2       Contents of Notice; Timing and Schedule for Hearing** – In addition to  
2 any requirements of state law, the Notice shall set a schedule for consideration of the Amended  
3 Permit Application. The schedule shall provide that: (i) any protest to the Amended Permit  
4 Application must be filed within thirty (30) days of the date of last publication of Notice; and (ii)  
5 in the event the Amended Permit Application is protested, a hearing shall be conducted and  
6 concluded no later than one hundred eighty (180) days from the date of last publication of  
7 Notice.

8                   **6.2.2.3       Conduct of Hearing; Protests** – The hearing shall be conducted by a  
9 hearing examiner. Pursuant to state law, protests shall be limited to the elements of OAC §  
10 785:20-5-4 and the applicable factors of OAC § 785:20-5-5.

11                   **6.2.2.4       Hearing Examiner Proposed Final Order; Presentation; Exceptions** –  
12 The hearing examiner shall prepare a proposed Final Order which shall be presented to the Board  
13 within forty-five (45) days of the conclusion of the hearing if the Amended Permit Application is  
14 protested. In the event the Amended Permit Application is not protested, the OWRB staff shall  
15 present a proposed Final Order to the Board within forty-five (45) days of the date of last  
16 publication of Notice. The proposed Final Order shall be presented and any exceptions to the  
17 proposed Final Order filed in accord with OAC § 785:4-9-1.

18                   **6.2.2.5       Final Order of OWRB** – The Board shall consider the proposed Final  
19 Order and any exceptions thereto and issue a Final Order within thirty (30) days of the filing of  
20 any exceptions in the manner prescribed by OAC § 785:4-9-2. Appeals from the OWRB’s Final  
21 Order shall be in accord with state law. The Parties may agree in writing that the condition of  
22 Section 4.1.6 shall be deemed satisfied, notwithstanding such appeal. If the Parties agree that the

1 condition of Section 4.1.6 shall be deemed satisfied, then each will be deemed to have waived  
2 any right it may have under Section 6.2.3.

3 **6.2.2.6 Timelines Not to Be Extended** – Unless the State, the Nations, and the  
4 City agree or it is otherwise ordered by a court of competent jurisdiction, the timelines set forth  
5 in Section 6.2.2 shall not be subject to extension and the State shall allocate sufficient resources  
6 to allow all time requirements to be met.

7 **6.2.2.7 Pre-Enactment Date Review** – If the Settlement Legislation has been  
8 introduced but the Enactment Date has not occurred by September 30, 2018, notwithstanding the  
9 Parties’ best efforts to secure its enactment, the process set forth in Sections 6.2.2.1 through  
10 6.2.2.5 shall commence at the City’s discretion, upon written notice to the OWRB and the  
11 Nations.

12 **6.2.2.8 Effective Only on Enforceability Date** – No permit the OWRB may  
13 issue to the City based on the Amended Permit Application will have any force or effect and the  
14 City shall exercise no rights thereunder prior to the Enforceability Date, and any permit the  
15 OWRB may issue to the City based on the Amended Permit Application shall include a  
16 condition implementing this limitation.

17 **6.2.3 Permit Conformance**

18 **6.2.3.1 Process for Addressing Non-Conformance** – If the OWRB issues a  
19 final permit and the City or either Nation asserts the final permit does not conform with the terms  
20 and conditions of Section 6.1, then the Party or Parties asserting such non-conformance shall: (i)  
21 within ten (10) days of the issuance of the final permit, provide notice to the other Parties of such  
22 assertion and (ii) seek to convene a meeting of the Parties to discuss such assertion and seek to

1 resolve any disagreements relating to non-conformance and/or necessary modifications to the  
2 final permit in order to ensure conformance.

3           **6.2.3.2       Remedy for Non-Conformance** – In the event the Parties can neither  
4 agree that the final permit conforms to Section 6.1 nor to modifications thereto that would  
5 resolve assertions of non-conformance, then: (i) the Parties will be unable to satisfy the  
6 condition precedent specified at Section 4.1.6, which circumstance will automatically activate  
7 the Expiration Date; and (ii) the City at its sole discretion may resubmit to the OWRB, and the  
8 OWRB shall be deemed to have accepted, OWRB Permit Application No. 2007-017 without the  
9 City’s having waived the priority date and proposed appropriate amounts of its initial permit  
10 application (Application No. 2007-017).

11           **6.2.3.3       Final Permit** – For purposes of Section 6.2.3, a permit shall be  
12 considered final and not subject to further appeal if: (i) any and all appeals from the OWRB’s  
13 issuance of the permit have been exhausted or (ii) the time has expired for any person to seek  
14 appellate review of the permit issued by the OWRB.

15           **6.3       Surrender** – Notwithstanding the possible cancellation or reduction in the future of  
16 the City Permit that could result by operation of state law, the City Permit shall be deemed  
17 surrendered in accord with 82 O.S. § 105.19 and OAC § 785:20-9-3(H) without any further  
18 action by the OWRB or City if the City by 2043 does not construct the Parallel City Pipeline and  
19 divert under the City Permit an amount equal to what the schedule of use specifies for 2040, *see*  
20 Exhibit 14; *provided*, that this deadline shall be tolled and extended for the duration of: (i) any  
21 court injunction that delays or halts the City’s construction of the Parallel City Pipeline, which  
22 injunction is entered as part of any litigation challenging the issuance of environmental permits,  
23 rights of way, or easements necessary for the Parallel City Pipeline; or (ii) any delay in excess of

1 three (3) years from the City’s initiation of legal action(s) to secure any Bureau of Indian Affairs’  
2 approval necessary for the purpose of acquiring easements or rights-of-way for the Parallel City  
3 Pipeline; *provided*, that the City shall diligently initiate and pursue such legal action(s).  
4 Regardless of any surrender, cancellation, or reduction of the City Permit pursuant to this Section  
5 6.3, any use of Conservation Storage Capacity transferred to the City pursuant to the Amended  
6 Storage Contract Transfer Agreement, except for the storage for the Administrative Set-Aside,  
7 shall remain subject to the Sardis Lake Release Restrictions set forth at Section 6.1.8.

8 **6.4 Administration of City Permit**

9 **6.4.1** Water released from City Sardis Storage for delivery to the Point of Diversion  
10 will not be considered or administered as part of the natural flow of Jack Fork Creek or the  
11 Kiamichi River subject to or available for diversion or appropriation by others. The City shall  
12 not be obligated to release water from City Sardis Storage to maintain the Bypass Requirement  
13 when it is not diverting water at the Point of Diversion. The City shall bear any and all  
14 conveyance losses from the Sardis Lake outlet structure to the Point of Diversion.

15 **6.4.2** The City shall have independent standing to bring a judicial action to enforce the  
16 provisions of Section 6.4.1 as against third party water users, regardless of whether prior  
17 administrative relief was sought from the OWRB and regardless of whether the OWRB is a party  
18 to or consents to said judicial proceeding.

19 **6.5 Additional Provisions**

20 **6.5.1 Water Conservation Program** – Within three (3) years of the Enforceability  
21 Date, the City will administratively approve a water conservation program appropriate for its  
22 water utility that generally follows American Water Works Association Water Conservation  
23 Standards. Following the approval, the City will periodically review and, as appropriate for its

1 water utility, update its water conservation program to conform with changes in American Water  
2 Works Association Water Conservation Standards. The City and the Trust will implement the  
3 conservation program as approved and thereafter updated by the City.

4 **6.5.2 Atoka and Sardis Conservation Projects Board and Fund**

5 **6.5.2.1 Establishment**

6 **6.5.2.1.1 Projects Board** – No later than ninety (90) days from the  
7 Enactment Date, the State, the Chickasaw Nation, the Choctaw Nation, and the City shall each  
8 appoint a representative to the Atoka and Sardis Conservation Projects Board. Each member  
9 shall serve at the pleasure of its appointing entity. Failure to appoint a member shall not  
10 constitute a breach of the Settlement Agreement nor shall it preclude the Board from performing  
11 its duties, as specified herein. Each appointing entity may reimburse from its own funds its  
12 respective appointed member for costs associated with their service, but each member shall  
13 otherwise serve without compensation.

14 **6.5.2.1.2 Projects Fund**

15 **6.5.2.1.2.1 Contributions** – Upon the Enactment Date and subject to an  
16 escrow agreement implementing the requirements of Section 6.5.2.1.2, the State, Nations, and  
17 City shall each contribute to a ten million dollar (\$10,000,000) fund, with: (i) the City  
18 contributing five million dollars (\$5,000,000), of which two million five hundred thousand  
19 dollars (\$2,500,000) would have been monies otherwise due to the State under the terms of the  
20 Storage Contract Transfer Agreement; and (ii) the Nations contributing five million dollars  
21 (\$5,000,000), with the Choctaw Nation paying seventy-five percent (75%) and the Chickasaw  
22 Nation paying twenty-five percent (25%) of such amount. The Atoka and Sardis Conservation  
23 Projects Board shall authorize expenditures from the Atoka and Sardis Conservation Projects

1 Fund solely for purposes of scoping, designing, implementing, operating, and maintaining  
2 projects to enhance recreational use or habitat for fish and wildlife at Atoka or Sardis Lake  
3 and/or to mitigate environmental impacts at Atoka or Sardis Lake.

4 **6.5.2.1.2.2 Interest-Bearing Account; Administration by Oklahoma**

5 **City Water Utilities Trust** – Subject to a fiduciary obligation owed to each of the Parties  
6 represented on the Atoka and Sardis Conservation Projects Board, the Oklahoma City Water  
7 Utilities Trust shall deposit the monies specified in Section 6.5.2.1.2.1 into a restricted interest-  
8 bearing account in accord with the procedures and contracts applicable to other similarly held  
9 Oklahoma City Water Utilities Trust funds, with five million (\$5,000,000) allocated to Atoka  
10 Lake conservation projects and five million (\$5,000,000) allocated to Sardis Lake conservation  
11 projects, and it shall cause allocation of any interest earned on principal to be made in proportion  
12 to the balance of unexpended monies allocated to projects for the two lakes. The Oklahoma City  
13 Water Utilities Trust will be responsible to each of the Parties represented on the Atoka and  
14 Sardis Conservation Projects Board for the proper administration, accounting, and expenditure of  
15 all monies in this account. The Oklahoma City Water Utilities Trust will provide to the Atoka  
16 and Sardis Conservation Projects Board a quarterly report of all claims, receipts, and  
17 expenditures from this account.

18 **6.5.2.1.2.3 Grants and Donations** – Subject to the same conditions that

19 otherwise apply pursuant to Section 6.5.2.1, the Oklahoma City Water Utilities Trust may accept  
20 grants and donations of monies for deposit in the fund described in Section 6.5.2.1.2.2 and may,  
21 further, accept donations of goods or services for the benefit of any project authorized by the  
22 Atoka and Sardis Conservation Projects Board. Any such grant or donation will be in addition to  
23 the contributions specified in Section 6.5.2.1.2.1 and not in lieu thereof.

1                   **6.5.2.1.2.4     Withdrawal, Expenditure, and Obligation of Account** – The  
2 Oklahoma City Water Utilities Trust may make no withdrawal or expenditure from or otherwise  
3 obligate any monies in the account described in Section 6.5.2.1.2.2 unless and until directed to  
4 do so by a resolution of the Atoka and Sardis Conservation Projects Board that has been  
5 approved by consensus of its members, and the Atoka and Sardis Conservation Projects Board  
6 shall authorize expenditures from the Atoka and Sardis Conservation Projects Fund solely for  
7 purposes of scoping, designing, implementing, operating, and maintaining projects to enhance  
8 recreational use or habitat for fish and wildlife at Atoka or Sardis Lake and/or to mitigate  
9 environmental impacts at Atoka or Sardis Lake.

10                   **6.5.2.2         Duties** – The Atoka and Sardis Conservation Projects Board’s duties  
11 shall be as follows:

12                   **6.5.2.2.1         Identification and Analysis of Need** – direct and supervise the  
13 identification and analysis of conservation needs and projects appropriate to the purposes  
14 described in Section 6.5.2.1.2.4;

15                   **6.5.2.2.2         Project Directions** – direct the scoping, design, and  
16 implementation of projects appropriate to the purposes described in Section 6.5.2.1.2.4; and

17                   **6.5.2.2.3         Internal Procedures** – to establish such procedures as are  
18 necessary for purposes of the Atoka and Sardis Conservation Project Board’s operation and  
19 performance of the duties set forth in Section 6.5.2.

20                   **6.5.2.3         Public Comment** – When developing project designs or  
21 implementation, operation, and maintenance plans, the Atoka and Sardis Conservation Projects  
22 Board will:

1                   **6.5.2.3.1**       early in its project or plan development process, hold a public  
2 meeting in Atoka or Pushmataha County for purposes of presenting proposed project or plan  
3 goals and soliciting public input thereon;

4                   **6.5.2.3.2**       prior to finalizing any proposed design or plan, publish details of  
5 developed proposals online for a period not less than forty five (45) days and thereafter receive  
6 and consider public comments submitted during that period; and

7                   **6.5.2.3.3**       not sooner than forty five (45) days after the close of the comment  
8 period, finalize and publish details of finalized designs and plans online.

9                   **6.5.2.4       Project Administration** – Subject to availability of funds in the account  
10 described in Section 6.5.2.1.2.2 and the Atoka and Sardis Conservation Projects Board’s  
11 beneficial interest therein, the Oklahoma City Water Utilities Trust shall administer all projects  
12 (including project operation, maintenance, and repair throughout the useful life of the project)  
13 that the Atoka and Sardis Conservation Projects Board authorizes and approves, entering into  
14 such contracts as are necessary and appropriate for such purposes. The Atoka and Sardis  
15 Conservation Projects Board’s authorization and approval of projects shall be in the same  
16 manner and subject to the same restrictions specified in Section 6.5.2.1.2.4. The Oklahoma City  
17 Water Utilities Trust will provide to the Atoka and Sardis Conservation Projects Board a  
18 quarterly report of all project work, including incurred and anticipated costs.

19                   **6.5.3   Scope of Sardis Lake Release Restrictions** – The effect of the Sardis Lake  
20 Release Restrictions imposed on the City Permit by Section 6.1.8 is to limit to one hundred  
21 thousand sixteen six hundred sixteen (116,616) AF the amount of Conservation Storage Capacity  
22 the City may store water in and release water from for purposes of diverting up to one hundred  
23 fifteen thousand (115,000) AFY at the Point of Diversion. The Sardis Lake Release Restrictions



1 shall not apply to the use of thirty-seven thousand nine hundred eight (37,908) AF of  
 2 Conservation Storage Capacity reserved for purposes of the twenty thousand (20,000) AFY  
 3 Administrative Set Aside. The remaining one hundred forty-two thousand six hundred seventy-  
 4 six (142,676) AF of Conservation Storage Capacity shall be limited to maintenance of lake levels  
 5 in support of recreation, fish and wildlife benefits, and no yield from Sardis Lake in excess of the  
 6 City’s one hundred fifteen thousand (115,000) AFY and the twenty thousand (20,000) AFY set  
 7 aside by OAC § 785:20-5-5(b)(3) will be available for contract or appropriation by any person.

8 **Table 2: Effect and Scope of Sardis Lake Release Restrictions on Conservation Storage Capacity**

Storage	Conservation Storage Capacity (AF)	Conservation Storage Capacity (Percent of Total)	Subject to Sardis Release Restrictions
Lake Level Maintenance (Recreation, Fish and Wildlife)	142,676	48%	n/a
Administrative Set-Aside	37,908	13%	No
City Use	116,616	39%	Yes
Total	297,200	100%	n/a

9

10 **6.5.4 Infrastructure Corridor** – The City shall reserve capacity in the Parallel City  
 11 Pipeline for use by the Chickasaw Nation or its assignee. The reserve capacity shall be sufficient  
 12 to convey five thousand (5,000) AFY with an average demand of six (6) mgd and a maximum  
 13 future peak demand of twelve (12) mgd. Water conveyed through such reserve capacity shall be  
 14 supported by a water use permit obtained from the OWRB pursuant to state law. The Chickasaw  
 15 Nation or its assignee may negotiate and contract with the City on appropriate and reasonable  
 16 terms for the use of such reserve capacity, but the City shall not require the payment of anything  
 17 more than capital repayment and the operation, maintenance, and replacement costs in proportion  
 18 to actual use of such reserve capacity under such contract. Nothing herein precludes the City  
 19 from agreeing to negotiate and contract for the use of additional amounts of water transmission  
 20 infrastructure capacity.

1           **6.5.5 Right-of-Way** – The Chickasaw Nation agrees to convey an easement to the City,  
2 which easement shall be as depicted in Exhibit 15, and the Chickasaw Nation and the City shall  
3 cooperate and coordinate on the submission of an application for approval of such conveyance  
4 by the Department of the Interior, in accord with federal law and process. Upon approval by the  
5 Department of the Interior, the City shall duly record the easement. In exchange for such  
6 conveyance, the City shall pay to the Chickasaw Nation the value of past unauthorized use and  
7 consideration for future use of the lands burdened by such easement, which value shall be based  
8 on an appraisal secured by the City and Nations and approved by the United States Bureau of  
9 Indian Affairs.

10           **6.5.6 Unused Permit or Storage Rights** – For purposes of ensuring reasonable  
11 availability to Settlement Area users of water under the City Permit or storage from City Sardis  
12 Storage, and exclusive of the storage rights available to users in southeastern Oklahoma pursuant  
13 to the Administrative Set-Aside, the Parties agree as follows:

14           **6.5.6.1**       The City may subcontract its rights to City Sardis Storage, but any  
15 subcontracted right, inclusive of direct diversions from Sardis Lake, shall be subject to the Sardis  
16 Lake Release Restrictions of Section 6.1.8.

17           **6.5.6.2**       In the event that: (i) prior to the later of 2043 or the date that is tolled  
18 and extended as provided in Section 6.3, the City has not yet constructed the Parallel City  
19 Pipeline or has not yet diverted water under the City Permit in an amount equal to what the  
20 schedule of use specifies for 2040, *see* Exhibit 14; or (ii) the City’s Permit has been surrendered  
21 pursuant to Section 6.3, the City shall not, subject to Section 6.5.6.4, unreasonably deny water  
22 users within the Settlement Area access to unexercised City Sardis Storage, pursuant to short-

1 term contracts of no more than ten (10) years. The City shall charge for such access to City  
2 Sardis Storage no more than a *pro rata* reimbursement of its own storage contract costs.

3           **6.5.6.3**       In the event the City has timely constructed the Parallel City Pipeline  
4 and diverted water under the City Permit in an amount equal to what the schedule of use  
5 specifies for 2040, *see* Exhibit 14, then the City shall not, subject to Section 6.5.6.4,  
6 unreasonably deny water users within the Settlement Area access to the City’s unexercised City  
7 Sardis Storage and/or the City’s unexercised right to use water under the City Permit, if any,  
8 pursuant to short-term contracts of no more than ten (10) years. The City shall charge for such  
9 access and/or use, including any implicated City infrastructure, no more than a *pro rata* share of  
10 costs associated with the acquisition, impoundment, transportation, and storage, which amounts  
11 shall be calculated in accord with the cost of service and rate design principles published by the  
12 American Water Works Association and Water Research Foundation or comparable successor  
13 entity.

14           **6.5.6.4**       The City may require short-term contracts entered pursuant to Sections  
15 6.5.6.2 or 6.5.6.3 to specify how the water user will avoid long-term reliance on City Sardis  
16 Storage and/or the City Permit.

17           **6.5.6.5**       Any person or entity that enters a short-term contract with the City  
18 pursuant to Section 6.5.6.2 for the use of City Sardis Storage must obtain a water use permit  
19 from the OWRB prior to the commencement of any use of water in conjunction with such  
20 storage.

21           **6.5.6.6**       Any person or entity that enters a short-term contract with the City  
22 pursuant to Sections 6.5.6.3 for the use of water under the City Permit must obtain a water use

1 permit from the OWRB prior to the commencement of such use if such use would involve a  
2 purpose of use, place of use, or point of diversion not authorized by the City Permit.

3 **6.5.7 Future Technical Discussions** – In order to equitably preserve the mutual  
4 benefits of Section 6.1 or otherwise pursuant to Section 6.1.8.2.4, the Nations, City, and OWRB  
5 may negotiate technical mechanisms to:

6 **6.5.7.1** allow for flexibility in the measurement, accounting, and timing of water  
7 stored or available for storage in the City Reservoirs under Sections 1.4, 1.32, and 1.42; and

8 **6.5.7.2** take into account potential benefits to the City and Nations from use of  
9 reclaimed water by the City and/or adjustments to water quality mixing zones in the City  
10 Reservoirs due to increased sedimentation.

11 **7. NATIONS USE OF WATER** – Subject to the State’s right to enforce the Settlement  
12 Agreement and the Settlement Act, the Nations have the right to use and to develop the right to  
13 use water as provided in this Section 7.

14 **7.1 In General** – Nothing herein precludes either Nation from obtaining a permit to use  
15 water pursuant to and in accord with state law, and neither Nation shall have any less right under  
16 the Settlement Agreement and the Settlement Act than what any person has pursuant to state law  
17 with respect to the use of water without a permit, including the drilling and use of wells for  
18 domestic purposes.

19 **7.2 Existing Uses by Permit** – The Nations shall possess and may exercise all existing  
20 uses by permit identified in this Section 7.2, which uses shall be in accord with state law and the  
21 identified permits. Administration and enforcement of these identified permitted uses shall be in  
22 accord with state law.





Table 5: Chickasaw Nation – Existing Uses Without Permit

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CN-1 <sup>1</sup>  (77354, 77898, 84381, and 122089)	WinStar (CTUA)	<u>Use Location:</u> Public Water Supply system  <u>Well locations:</u> E SE SW of Sec. 19, T9S, R2EI	Trust	Love	750.0	4	Three at 750' and one at 690'	Antlers	Public supply
CN-2 <sup>2</sup>  (n/a)	WinStar (golf course)	<u>Use Location:</u> N NW SW of Sec. 29, T9S, R2EI and E E of Sec. 30, T9S, R2EI and S S of Sec. 20, T9S, R2EI  <u>Well Locations:</u> W W NW of Sec. 29, T9S, R2EI	Non- trust	Love	330.0	4	All at 50' or less	Alluvium and terrace of the Red River	Irrigation
CN-3  (non-irr. ag. 122341; others n/a)	Chickasaw Farms	<u>Use Location:</u> N NW of Sec. 7, T1S, R2RI and N N of Sec. 12, T1S, R2EI  <u>Well Locations:</u> NE SW of Sec. 6, T1S, R2EI and NE NE of Sec 12, T1S, R2EI	Non- trust	Murray	260.0	9	One at 40' and eight unknown	Washita	One for non- irrigation agriculture and eight for irrigation
CN-4  (n/a)	Chickasaw Nation Dry Cleaning	<u>Use and Well Location:</u> NE of Sec. 9, T1N, R 1EI	Trust	Garvin	10.0	1	Unknown	Washita	Commercial
CN-5  (n/a)	Golden Tract	<u>Use and Well Locations:</u> NE SW of Sec. 3, T4S, R6EI	Non- trust	Johnston	Domestic	1	Unknown	Antlers	Domestic
CN-6  (136049)	Connerville Senior Site	<u>Use and Well Location:</u> SW SW NW of Sec. 25, T1S, R6EI	Trust	Johnston	Domestic	1	260'	Arbuckle-Simpson	Domestic
CN-7  (n/a)	Johnston White House	<u>Use and Well Location:</u> NW SW; S SW NW of Sec. 14, T4S, R7EI	Trust	Johnston	Domestic	1	Unknown	Antlers	Domestic
CN-8  (n/a)	Burney Institute	<u>Use and Well Location:</u> NE SW NE of Sec. 4, T7S, R4EI	Trust	Marshall	Domestic	1	Unknown	Antlers	Domestic

<sup>1</sup> To the extent the uses of CN-1 are redundant of uses pursuant to OWRB Permits Nos. 2005-554 or 2005-553, the permits will govern.

<sup>2</sup> To the extent the uses of CN-2 are redundant of uses pursuant to OWRB Permit No. 2005-520, the permit will govern.

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CN-9  (103638 and 103650)	Artesian Hotel	<u>Use and Well Locations:</u> SE SE SE of Sec. 34, T1N, R3E1	Trust	Murray	Domestic	2	One at 850' and one at 595'	Arbuckle-Simpson	Domestic
CN-10  (n/a)	Chigley Mansion	<u>Use and Well Locations:</u> S SE SW of Sec. 32, T1N, R2E1	Trust	Murray	Domestic	2	Unknown	Washita	Domestic
CN-11  (13541)	Chickasaw Farms	<u>Use and Well Location:</u> SW NE NE of Sec. 1, T1S, R1E1	Non- trust	Murray	Domestic	1	215'	Washita	Domestic
CN-12	Red Springs Cemetery	<u>Use and Well Location:</u> NE SE SE of Sec. 17, T3N, R8E1	Trust	Pontotoc	Domestic	1	47.5'	Unidentified	Domestic

1

2           **7.4.2 Choctaw Nation** – The Choctaw Nation’s existing uses without permit are  
3 identified in Table 6.

4

**Table 6: Choctaw Nation – Existing Water Uses Without Permit**

Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CNO-1	Licksillet Ranch	<u>Well Locations:</u> One at SE SE Sec. 20, T8S, R23E1; one at NW SE, Sec. 29, T8S, R23E1; one at NW SW, Sec. 29, T8S, R23E1; and one at SE NE, Sec. 19, T8S, R23E1  <u>Use Locations:</u> Secs. 19-21, 24- 25, 28-30, 32, T10S, R26E1; and Sec. 8, T10S, R24E1; and Sec. 15, T10S, R25E1	Non- trust	McCurtain	300.0	4	All at 400'	Woodbine bedrock	Irrigation, stock
CNO-2  (32877)	4 Star Ranch	<u>Well and Use Location:</u> Sec. 31, T6S, R19E1, Secs. 5 and 6, T7S, R19E1	Non- trust	Pushmataha	15.0	1	125'	Kiamichi bedrock	Irrigation, stock
CNO-3	Sawyer Ranch	<u>Well and Use Locations:</u> Sec. 31, T6S, R19E1	Non- trust	McCurtain	150.0	3	All at 275'	Woodbine bedrock	Irrigation, stock



Use No. (Well Id.)	Property	Location	Land Status	County	Amount (AFY)	No. of Wells	Depth	Source	Purpose of Use
CNO-4 <sup>3</sup>	Tom Ranch	<u>Well and Use Locations:</u> Secs. 3, 5, 8-10, 15, and 16, T10S, R26EI; Sec. 15 R25EI; and Sec. 15, T10S, R26EI	Non-trust	McCurtain	250.0	1	Unknown	Woodbine bedrock	Irrigation, stock
CNO-5	Grant Tract	<u>Well and Use Location:</u> Sec. 10, T10S, R25EI	Non-trust	McCurtain	25.0	1	Unknown	Woodbine bedrock	Irrigation, stock

1

2           **7.5     Changes to Existing Uses Without Permit**

3           **7.5.1   Non-Trust Land** – Any change in the amount of water, well location, place of  
4 use, or purpose of use for any right to use water that is recognized under Section 7.4 as located  
5 on Non-Trust Land shall be applied for, evaluated, and processed pursuant to state law and shall  
6 thereafter be administered and enforced in accord with state law.

7           **7.5.2   Trust Land** – With respect to any right to use water recognized under Section 7.4  
8 which is located on Trust Land, either Nation may change the well location, place of use, or  
9 purpose of use of such right so long as the new well location and/or new place of use is also  
10 located on Trust Land and over the same source aquifer. No less than sixty (60) days prior to  
11 making such change, the Nation taking such action will provide the OWRB with written notice  
12 that identifies the use number and location of the subject right, a legal description of the new  
13 well location and/or new place of use, and/or a description of the new purpose of use, as  
14 applicable. Any change of a right recognized under Section 7.4 from Trust Lands to Non-Trust  
15 Lands must be applied for, evaluated, and processed pursuant to state law and shall thereafter be  
16 administered and enforced in accord with state law. Any increase in the amount of water used on

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<sup>3</sup> To the extent the uses of CN0-4 are redundant of uses pursuant to OWRB Permit No. 1952-450, the permit will govern.

1 Trust Land beyond what is recognized under Section 7.4 shall be made in accord with Section  
2 7.6.2.

3 **7.6 Future Development of Groundwater Use**

4 **7.6.1 Non-Trust Land** – Any additional taking of groundwater underlying Non-Trust  
5 Land by either Nation, other than what is identified in Sections 7.2 or 7.4 or otherwise provided  
6 for in Section 7.1, must be applied for, evaluated, and processed pursuant to state law and shall  
7 thereafter be administered and enforced in accord with state law.

8 **7.6.2 Trust Land Non-Domestic Use Wells** – Subject to Section 7.6 and in accord  
9 with the Settlement Agreement and the Settlement Act, the Nations have the right to take and use  
10 groundwater underlying any Trust Lands within the Settlement Area in an amount not to exceed  
11 the equal proportionate share established pursuant to state law for the underlying source aquifer;  
12 *provided*, that acreage dedicated to a use of groundwater under Section 7.6 shall not be used for  
13 purposes of any state law permit or existing use recognized pursuant to Section 7 to take and use  
14 groundwater from the same source aquifer. The Nation proposing to take and use groundwater  
15 shall:

16 **7.6.2.1** Employ a state-licensed water well driller and require such driller to  
17 comply with state well drilling and construction rules, including the filing of a completion report  
18 with the OWRB;

19 **7.6.2.2** Locate the well(s) in accord with state well spacing requirements and/or  
20 spring or stream setbacks;

21 **7.6.2.3** Provide the following information to the OWRB at least sixty (60) days  
22 prior to commencing any drilling for such purpose: (i) the well location; (ii) the acreage  
23 overlying the source aquifer that is dedicated to such use; (iii) the amounts annually to be

1 withdrawn from such well(s); (iv) the location at which such water is to be placed in use; and (v)  
2 the use to which the withdrawn water is to be placed.

3 **7.6.3 Trust Land Domestic Wells** – Subject to Section 7.6 and in accord with the  
4 Settlement Agreement and the Settlement Act, the Nations shall have no less right to take  
5 groundwater from Trust Land for domestic use than what any person has pursuant to state law. In  
6 drilling any such well, the Nations will employ a state-licensed water well driller, require such  
7 driller to comply with state well drilling and construction rules, and within thirty (30) days of  
8 drilling such well, cause a well completion report to be filed with the OWRB.

9 **7.7 Future Development of Surface Water Uses**

10 **7.7.1 Non-Trust Land** – Any appropriation of surface water from a point of diversion  
11 on Non-Trust Land by either Nation must be applied for, evaluated, and processed pursuant to  
12 state law and shall thereafter be administered and enforced in accord with state law.

13 **7.7.2 Trust Land** – Subject to Section 7.7 and in accord with the Settlement  
14 Agreement and the Settlement Act, each Nation has the right to appropriate surface water within  
15 the Settlement Area for use on Trust Lands, which lands would constitute riparian land under  
16 state law. The maximum amount of water which either Nation may appropriate for use on  
17 riparian Trust Lands under Section 7.7 in any individual Settlement Area Hydrologic Basin shall  
18 be five hundred (500) AFY.

19 **7.7.3** In the event either Nation intends to develop surface water on Trust Lands  
20 pursuant to Section 7.7, that Nation shall provide notice to the OWRB of the intent to appropriate  
21 water. The notice shall be in writing and specify: (i) the location and acreage of the riparian  
22 Trust Lands where the water will be used; (ii) the amount of water subject to the appropriation;

1 (iii) the basin and stream from which the water would be appropriated; (iv) the use to which the  
2 water will be placed; and (v) the point of diversion.

3 **7.7.4** Following notice to the OWRB and in advance of any appropriation, the Nation  
4 intending to appropriate the water and the OWRB shall meet and, using the model then available  
5 for the source basin, evaluate whether: (i) water is available at the point of diversion based on an  
6 evaluation of Mean Available Flow and, to the extent applicable, any water quality, ecological,  
7 and recreational needs evaluated in a manner consistent with OAC § 785:20-5-5(e); and (ii) the  
8 intended use would interfere with existing beneficial uses of water.

9 **7.7.4.1** If following the evaluation the OWRB and the Nations agree that water  
10 is available for the appropriation from the stream, the Nation may proceed with the appropriation  
11 as noticed or as modified by agreement as between the Nation and OWRB. The priority date for  
12 the water developed under Section 7.7 shall be the date of the notice of intent to appropriate. The  
13 Nation shall provide notice to the OWRB when the works related to the appropriation are  
14 complete and when beneficial use of the water has commenced. In the event the Nation does not  
15 develop the works or place any water to beneficial use within seven (7) years of a notice of intent  
16 to appropriate provided pursuant to Section 7.7.3, any unused water shall revert to the public and  
17 the Nation's right to develop the water pursuant to the notice shall terminate, subject to the right  
18 to refile a notice of intent to appropriate. The Nation's appropriation and use of water shall  
19 remain subject to the OWRB's right to file an action pursuant to Section 10 to enforce the  
20 prohibition against waste or interference in Section 7.8.2 and to administer the right in priority, if  
21 necessary.

22 **7.7.4.2** If the Nation and OWRB agree that water is not available for the  
23 appropriation from the stream, the Nation shall not proceed with the noticed appropriation.

1           **7.7.4.3**       If the Nation and OWRB disagree as to water availability, the Nation  
2 may proceed with its noticed appropriation subject to the OWRB’s right to file an action  
3 pursuant to Section 10 to seek a determination of availability and/or enforce the prohibition  
4 against waste or interference in Section 7.8.2.

5           **7.7.5**     A Nation making an appropriation pursuant to Section 7.7 may make changes to  
6 the place and purpose or point of diversion of the appropriation, but only within the tract of  
7 riparian Trust Land for which the appropriation was originally made and only after written notice  
8 to the OWRB at least sixty (60) days prior to such changes. No appropriation made under  
9 Section 7.7 may be transferred for purposes of use on another parcel of land without a permit  
10 from the OWRB. No increase in the amount of water appropriated shall occur without first  
11 satisfying the requirements of Sections 7.7.3 and 7.7.4.

12           **7.7.6 Choctaw Nation Development of Impoundment** – In addition to the Choctaw  
13 Nation’s right to appropriate surface water pursuant to Sections 7.7.1 and 7.7.2, the Choctaw  
14 Nation may develop an impoundment consistent with the Oklahoma Scenic Rivers Act, 82 O.S.  
15 § 896.1, *et seq.* This single impoundment may be located on lands within the Settlement Area  
16 and held or controlled by the Choctaw Nation within one of the following Settlement Area  
17 Hydrologic Basins: Muddy Boggy, Lower Canadian, Lower Arkansas, Poteau, Kiamichi, Upper  
18 Little, or Mountain Fork. The Choctaw Impoundment shall be subject to the following  
19 limitations:

20           **7.7.6.1**       The Choctaw Impoundment shall not exceed one hundred fifty (150)  
21 acres in surface extent nor impound more than one thousand five hundred (1,500) AF.

22           **7.7.6.2**       Subject to a water availability determination made consistent with  
23 Section 7.7.4, the right to develop the impoundment shall include an initial right to divert up to

1 one thousand five hundred (1,500) AF to fill the impoundment and the right thereafter to offset  
2 the evaporative losses in an amount not to exceed five hundred (500) AFY.

3 **7.7.6.3** If the Choctaw Nation chooses to develop the Choctaw Impoundment, it  
4 shall provide notice to the OWRB one hundred eighty (180) days prior to commencing  
5 construction of the impoundment, which notice shall include plan and design specifications  
6 prepared by a registered engineer relating to the design, performance, and safety standards of the  
7 dam, which shall, at a minimum, conform to the design, performance and safety standards of  
8 OAC § 785 Chapter 25, or updates thereto.

9 **7.8 General Conditions**

10 **7.8.1 Annual Reporting** – Each Nation shall, by March 15 of each year, provide a  
11 report to the OWRB indicating the amount of groundwater taken or surface water appropriated  
12 and placed to beneficial use in the preceding calendar year, the well location or point of  
13 diversion, the purpose of use, and the acreage on which the use occurred.

14 **7.8.2 Prohibition Against Waste and Interference** – No right recognized and  
15 provided for herein, nor any change in such the use of such right, authorizes either Nation to  
16 appropriate water in a manner that would commit waste or interfere with existing water rights.  
17 Determinations of waste or interference shall be based on state law.

18 **7.8.3 OWRB Verification** – Upon reasonable notice, the Nations shall provide the  
19 OWRB with access to Non-Trust Lands, Trust Lands, and the lands on which the Choctaw  
20 Impoundment is constructed for purposes of OWRB’s verification of appropriations, uses, and  
21 dam safety requirements for purposes of ensuring compliance with Section 7. The Nations shall  
22 have the opportunity to be represented during any on-site verification.  
23

1 **8. ALLOTTEE RIGHTS**

2 **8.1 In General** – Pursuant to the Atoka Agreement as ratified by Congress, Act of June  
3 28, 1898, § 29, 30 Stat. 495, 505, and as amended by the act of July 1, 1902, ch. 1362, 32 Stat.  
4 641, the Nations issued patents to their respective tribal members and citizens and thereby  
5 conveyed to individual Choctaws and Chickasaws all right, title, and interest in and to land that  
6 was possessed by the Nations, excepting certain mineral rights.

7 **8.1.1 No Regulatory Authority** – When title passed from the Nations to their  
8 respective tribal members and citizens, the Nations did not convey and those individuals did not  
9 receive any right of regulatory or sovereign authority, including with respect to water.

10 **8.1.2 Waiver and Delegation by Nations** – In addition to the waivers provided at  
11 Sections 2.1.1.3 and 2.1.1.4, the Nations permanently delegate to the State any regulatory  
12 authority each may possess over water and water rights on Allotments, which the State shall  
13 exercise in accord with Section 8.

14 **8.2 Allottee Rights to Use of Water on an Allotment** – Allottees may use water on an  
15 Allotment as set forth in Section 8.

16 **8.2.1 Surface Water Use** – Allottees may divert and use on his Allotment six (6) AFY  
17 of surface water per one hundred sixty (160) acres of their Allotment, to be used solely for  
18 domestic uses on an Allotment that constitutes riparian land under state law as of the Enactment  
19 Date. Such use shall be subject to all rights and protections of state law as of the Enactment Date,  
20 including all protections against loss for non-use. An Allottee may divert water under this  
21 Section 8.2.1 without a permit or any other authorization from the OWRB.

22 **8.2.2 Groundwater Use** – Allottees may drill wells on their respective Allotments to  
23 take and use five (5) AFY of groundwater for domestic uses on their Allotment or any greater

1 amount allowed under state law. Such use shall be subject to all rights and protections of state  
2 law as of the Enactment Date, including all protections against loss for non-use. An Allottee may  
3 drill wells and use groundwater under this Section 8.2.2 without a permit or any other  
4 authorization from the OWRB.

5 **8.2.3 Future Changes in State Law** – If state law changes to limit use of water to an  
6 amount less than the amounts specified in Sections 8.2.1 and 8.2.2, an Allottee retains the rights  
7 to use water in accord with those Sections, subject to Section 8.4.3. Prior to taking any action to  
8 limit an individual’s use of water, the OWRB must give the individual an opportunity to  
9 demonstrate that he or she qualifies as an Allottee and that he or she is using water on his or her  
10 Allotment pursuant to and in accord with the Settlement Agreement and the Settlement Act.

11 **8.3 Allottee Options for Additional Water** – To use an amount of water in excess of the  
12 amounts provided in Section 8.2, an Allottee must either invoke the process set forth in Section  
13 8.4 or apply to the OWRB for a permit pursuant to and in accord with state law.

14 **8.4 Determination in Federal District Court** – In lieu of applying to OWRB for a  
15 permit to use more water than allowed under Section 8.2, an Allottee may, after written notice to  
16 the OWRB, file an action in the United States District Court for the Western District of  
17 Oklahoma for determination of the Allottee’s water rights. The Settlement Legislation shall  
18 provide for such cause of action and shall require the Allottee to:

19 **8.4.1** join the OWRB as a party; and

20 **8.4.2** publish notice in a newspaper of general circulation within the Settlement Area  
21 Hydrologic Basin in which his or her Allotment is located for two (2) consecutive weeks, with  
22 first publication appearing within thirty (30) days of the Allottee’s having filed the action.



1           **8.4.3 Determination Final** – If an Allottee elects to have his or her rights determined  
2 pursuant to Section 8.4, such determination shall be final as to any rights under federal law and  
3 in lieu of any rights to use water on an Allotment as provided in Section 8.2. Nothing herein  
4 precludes an Allottee from applying to the OWRB for water rights pursuant to state law or to  
5 utilize any rights allowed by state law that do not require a permit from the OWRB.

6           **8.5 OWRB Administration and Enforcement** – Once an Allottee exercises any right  
7 under Section 8.2, or has rights determined under Section 8.4, the OWRB shall have jurisdiction  
8 to administer those rights. An Allottee may challenge OWRB administration of rights  
9 determined under Section 8.4 in the United States District Court for the Western District of  
10 Oklahoma.

11           **8.6 Prior Existing State-Law Rights** – Water rights held by an Allottee as of the  
12 Enforceability Date pursuant to a permit issued by the OWRB shall continue to be governed by  
13 the terms of that permit and applicable state law and regulation.

## 14 **9. WATER PLANNING IN SETTLEMENT AREA**

### 15 **9.1 In General**

16           **9.1.1 Oklahoma Comprehensive Water Plan** – In addition to the OWRB’s other  
17 regulatory and administrative responsibilities under state law, 82 O.S. § 1086.2 authorizes,  
18 empowers, and directs the OWRB to serve as the State’s lead water planning agency, to conduct  
19 technical studies in support of ongoing water planning work, and to prepare and publish an  
20 update to the Oklahoma Comprehensive Water Plan each decade.

21           **9.1.2 Common Interest** – The State and Nations have a common interest in the long-  
22 term sustainability of Settlement Area Waters and supporting water planning with sound science,  
23 best available information, and stakeholder input. The State and Nations recognize the value

1 inherent in communicating and coordinating on technical studies and other planning efforts  
2 related to Settlement Area Waters. Nothing in Section 9 creates any enforcement right under  
3 Section 10.

4 **9.2 Communication and Coordination**

5 **9.2.1 Annual Planning Meeting** – For purposes of supporting the effective  
6 coordination of planning efforts relating to the management, protection, conservation,  
7 development, and utilization of Settlement Area Waters, OWRB staff and representatives of the  
8 Nations will meet annually for:

9 **9.2.1.1** Presentations regarding work the State and each Nation has conducted  
10 the prior year relating to technical studies and other water planning efforts within the Settlement  
11 Area and discussions of ongoing efforts to update the Oklahoma Comprehensive Water Plan;

12 **9.2.1.2** Presentations regarding work plans and goals the State and each Nation  
13 has for the coming year or years relating to technical studies and other water planning efforts  
14 within the Settlement Area, including any anticipated federal funding sources for such efforts;

15 **9.2.1.3** Discussion of opportunities for coordination in the interests of efficiency  
16 and effectiveness in: (i) water planning efforts and (ii) the application for and use of federal  
17 funding; and

18 **9.2.1.4** Designation of appropriate staff-level lines of communication for the  
19 coming year.

20 **9.2.2 Notification** – To facilitate effective communication, coordination, and efficient  
21 use of resources between annual planning meetings, the Nations will provide timely notice to the  
22 OWRB of any additional plans to undertake specific studies, other planning efforts, or federal

1 funding applications, and OWRB staff and representatives of the Nations may meet to discuss  
2 potential coordination of efforts in accord with the prior annual planning meeting.

3 **10. ENFORCEMENT OF SETTLEMENT AGREEMENT; VENUE AND**  
4 **JURISDICTION**

5 **10.1 In General**

6 **10.1.1** The Settlement Legislation shall provide a federal cause of action for and federal  
7 jurisdiction over claims brought by a Party or Parties seeking declaratory or equitable relief for  
8 the interpretation or enforcement of the terms of the Settlement Agreement, the Amended  
9 Storage Contract Transfer Agreement, and the Settlement Act. No action shall be authorized for  
10 money damages against any Party. Neither the Settlement Commission established by the  
11 Settlement Act in accord with Section 5.3.3.2 nor the Atoka and Sardis Conservation Projects  
12 Board established pursuant to Section 6.5.2.1.1 may sue or be sued, and neither shall be  
13 considered a proper or necessary party for any purpose in any action, including actions to  
14 interpret or enforce the terms of the Settlement Agreement, the Amended Storage Contract  
15 Transfer Agreement, or the Settlement Act.

16 **10.1.2** Venue and jurisdiction for all causes of action relating to the Settlement  
17 Agreement, the Amended Storage Contract Transfer Agreement, or the Settlement Act shall be  
18 in the United States District Court for the Western District of Oklahoma. No action may be  
19 brought in any other state, tribal, or federal court or administrative forum for any purpose  
20 relating to the enforcement or the interpretation of the Settlement Agreement, the Amended  
21 Storage Contract Transfer Agreement, or Settlement Act.

1       **10.2 Notice and Conference** – The following shall be a prerequisite to any Party’s filing  
2 suit to interpret or enforce the Settlement Agreement, the Settlement Act, or the Amended  
3 Storage Contract Transfer Agreement pursuant to Section 10:

4           **10.2.1** Any party asserting noncompliance or seeking interpretation of the Settlement  
5 Agreement, Settlement Act, or Amended Storage Contract Transfer Agreement shall first serve  
6 written notice on the Party or Parties alleged to be in breach of the Settlement Agreement or  
7 violation of the Settlement Act;

8           **10.2.2** The notice shall identify the specific provision of the Settlement Agreement,  
9 Settlement Act, or Amended Storage Contract Transfer Agreement alleged to have been violated  
10 or in dispute and shall specify in detail the asserting Party’s contention and any factual basis for  
11 the claim;

12           **10.2.3** Representatives of the Party alleging a breach or violation and the Party or Parties  
13 alleged to be in breach or violation shall meet within thirty (30) days of receipt of notice in an  
14 effort to resolve the dispute. If the matter is not resolved to the satisfaction of the Party alleging  
15 breach within ninety (90) days of the original notice, such Party may take any appropriate action  
16 for interpretation or enforcement consistent with the Settlement Agreement and the Settlement  
17 Act.

## 18 **11. GENERAL COMMITMENTS**

19       **11.1** The State, the Nations, and the City shall take any and all actions necessary to support  
20 all terms and conditions of the Settlement Agreement, take all necessary actions to satisfy all  
21 conditions precedent to the enforceability of the Settlement Agreement, and undertake all actions  
22 necessary to fulfill all obligations set forth herein, whether those obligations arise prior to or after  
23 the Enforceability Date. Such support and actions include but are not limited to the following:

1           **11.1.1** Nations non-objection consistent with Section 2.6 to the conditions relating to the  
2 City’s Amended Permit as set forth in Section 6;

3           **11.1.2** OWRB staff support for the conditions relating to the City’s Amended Permit as  
4 set forth in Section 6;

5           **11.1.3** State, Nations, and City support to pursue and obtain enactment of the Settlement  
6 Legislation; and

7           **11.1.4** Cooperation among the State, Nations, and City to work with the United States in  
8 conforming the Settlement Agreement to the Settlement Act, as may be necessary, in a timely  
9 manner.

10           **11.1.5** To the extent OWRB may be required to take action prior to the Enforceability  
11 Date which implicates the Settlement Agreement, the OWRB shall work with the Nations and  
12 the City to ensure that the integrity of the Settlement Agreement and the benefits it secures to the  
13 Parties are maintained and secured from the Execution Date through the Enforceability Date and  
14 thereafter.

15           **11.2 Binding Effect** – Execution of the Settlement Agreement by all Parties signifies that  
16 all provisions of the Settlement Agreement have been approved by each signatory Party, that  
17 each person signing had the lawful authority to do so on behalf of the Party designated, and that  
18 each Party is bound by all provisions of the Settlement Agreement according to its terms and the  
19 Settlement Act.

20           **12. NOTICE**

21           **12.1** Unless otherwise specified by any Party in writing sent to all other Parties, all notice  
22 required to be given under the Settlement Agreement shall be written and given as follows:  
23

1           **12.1.1** To the State

2                           The Governor of the State of Oklahoma  
3                           2300 N. Lincoln Boulevard, Room 212  
4                           Oklahoma City, Oklahoma 73105

5                           The Attorney General of the State of Oklahoma  
6                           313 NE 21st Street  
7                           Oklahoma City, Oklahoma 73105

8           **12.1.2** To the Choctaw Nation of Oklahoma

9                           The Chief of the Choctaw Nation of Oklahoma  
10                          P.O. Box 1210  
11                          Durant, Oklahoma 74702

12                         The General Counsel of the Choctaw Nation of Oklahoma  
13                         P.O. Box 1210  
14                         Durant, Oklahoma 74702

15          **12.1.3** To the Chickasaw Nation

16                         The Governor of the Chickasaw Nation  
17                         P.O. Box 1548  
18                         Ada, Oklahoma 74821

19                         The General Counsel of the Chickasaw Nation  
20                         P.O. Box 1548  
21                         Ada, Oklahoma 74821

22          **12.1.4** To the OWRB

23                         The Executive Director of the Oklahoma Water Resources Board  
24                         3800 N. Classen Boulevard  
25                         Oklahoma City, Oklahoma 73118

26                         The General Counsel for the Oklahoma Water Resources Board  
27                         3800 N. Classen Boulevard  
28                         Oklahoma City, Oklahoma 73118

29          **12.1.5** To the City

30                         The Mayor of the City of Oklahoma City  
31                         200 N. Walker Avenue  
32                         Oklahoma City, Oklahoma 73102

1 The City Manager of the City of Oklahoma City  
2 200 N. Walker Avenue  
3 Oklahoma City, Oklahoma 73102

4 The Municipal Counselor for the City of Oklahoma City  
5 200 N. Walker Avenue  
6 Oklahoma City, Oklahoma 73102

7 **12.1.6 To the Trust**

8 The General Manager of the Oklahoma City Water Utilities Trust  
9 420 W. Main Street, Suite 500  
10 Oklahoma City, Oklahoma 73102

11 **12.1.7 To the United States**

12 The Secretary of the United States Department of the Interior  
13 1849 C Street NW  
14 Washington, DC 20240

15 **13. EXPIRATION DATE**

16 **13.1** The following shall apply if: (i) the Secretary does not publish a certification in  
17 accord with Section 4.2 on or before September 30, 2020, or on or before the date that is  
18 otherwise established by written agreement as provided by Section 13; or (ii) the Parties are  
19 unable to resolve an assertion of non-conformance raised pursuant to Section 6.2.3:

20 **13.1.1** The Settlement Agreement shall be null and void, except for Section 13 and any  
21 provisions of the Settlement Agreement that are necessary to effectuate Section 13 (but only for  
22 purposes of effectuating Section 13) and, except with respect to Section 13, the State, the  
23 Nations, the City, the Trust, and the United States shall not be bound by any obligations or  
24 benefit from any rights recognized thereunder.

25 **13.1.2** The waivers and releases of Section 2.1 and 2.2 and Exhibits 5 and 6 shall not  
26 become effective.

1           **13.1.3** The waivers of sovereign immunity and consents to suit provided in Section 3  
2 shall not become effective.

3           **13.1.4** If the City Permit has been issued, it shall be null and void. The City may re-  
4 submit to the OWRB, and the OWRB shall be deemed to have accepted, the OWRB Permit  
5 Application No. 2007-017 without having waived the priority date and appropriate amounts of  
6 its initial permit application.

7           **13.1.5** The Amended Storage Contract shall be null and void notwithstanding any  
8 execution or approval thereof, and the Storage Contract Transfer Agreement shall be deemed to  
9 be in full force and effect as between the State and the Trust.

10           **13.1.6** If the Atoka and Sardis Conservation Projects Fund has been established and  
11 funded, the funds shall be returned to the respective funding Parties with accrued interest, if any.

12           **13.2** The occurrence of the Expiration Date shall not, in any way, prejudice:

13           **13.2.1** any argument or suit that the Nations may bring to contest the City's pursuit of  
14 OWRB Permit Application No. 2007-017 or any modified version thereof or to contest the  
15 Storage Contract Transfer Agreement;

16           **13.2.2** any argument, defense, or suit the State may bring or assert with regard to the  
17 Nations' claims to water or over water in the Settlement Area; or

18           **13.2.3** any argument, defense or suit the City may bring or assert with regard to the  
19 Nations' claims to water or over water in the Settlement Area relating to OWRB Permit  
20 Application No. 2007-017 or any modified version thereof or to contest the Storage Contract  
21 Transfer Agreement.

22           **13.3** The Expiration Date may be extended by the Parties if:

23           **13.3.1** prior to the Enactment Date, all Parties agree to such extension in writing; or



1           **13.3.2** after the Enactment Date, all Parties agree to such extension in writing and such  
2 extension is in accord with the Settlement Act.

3   **14.    EFFECT OF SETTLEMENT AGREEMENT**

4           **14.1    Effect of Settlement Agreement** – The Settlement Agreement shall bind the United  
5 States as trustee for the Nations, the State, the Nations, and the OWRB as to the claims and rights  
6 of the Nations in any general stream adjudication that may in the future be filed in the State of  
7 Oklahoma.

8           **14.2** By entering the Settlement Agreement, the United States does not concede that the  
9 State and the OWRB had jurisdiction over water or rights on Trust Lands or Allotments prior to  
10 the Enactment Date.

11          **14.3** Nothing in the Settlement Agreement:

12           **14.3.1** affects the authority of each respective Nation to manage and regulate the exercise,  
13 on Trust Land consistent with the Settlement Agreement and the Settlement Act, of its water rights  
14 recognized by or established pursuant to Section 7;

15           **14.3.2** affects the ability of the United States, acting as sovereign, to take actions  
16 authorized by law, including any laws relating to health, safety, or the environment, including:

17           **14.3.2.1** the Comprehensive Environmental Response, Compensation, and  
18 Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*);

19           **14.3.2.2** the Safe Drinking Water Act (42 U.S.C. § 300f, *et seq.*);

20           **14.3.2.3** the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); and

21           **14.3.2.4** any regulations implementing the Acts described in Section 14.3.2;

22           **14.3.3** affects the ability of the United States to raise defenses based on 43 U.S.C. § 666(a);  
23 and



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**STATE OF OKLAHOMA**

  DRAFT    
Mary Fallin, Governor

Date: \_\_\_\_\_

  DRAFT    
E. Scott Pruitt, Attorney General

Date: \_\_\_\_\_

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**CHICKASAW NATION**

  DRAFT    
Bill Anoatubby, Governor

Date: \_\_\_\_\_

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**CHOCTAW NATION OF OKLAHOMA**

  DRAFT    
Gary Batton, Chief

Date: \_\_\_\_\_

**OKLAHOMA WATER RESOURCES BOARD**

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  DRAFT    
Linda Lambert, Chair

Date: \_\_\_\_\_

Attestation:   DRAFT    
Jason Hitch, Secretary

Date: \_\_\_\_\_

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**CITY OF OKLAHOMA CITY**

  DRAFT    
Mick Cornett, Mayor

Date: \_\_\_\_\_

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**OKLAHOMA CITY WATER UTILITY TRUST**

  DRAFT    
Pete White, Chair

Date: \_\_\_\_\_