

## **RE: MOU FOR STOCKTON LAKE WATER ALLOCATION**

### **Background:**

For your consideration is a Memorandum of Understanding between the City of Nixa and Southwest Missouri Water (SWMO) for the reallocation of water storage space in Stockton Lake. The City of Nixa has been working with SWMO for over twenty years to secure an additional water supply for Nixa and Southwest Missouri. I wanted to first provide you with a little background information on the organization and the necessity to secure a future water source for the city.

As a brief history, SWMO was originally formed as Tri-State Water in 2003. The sole purpose of the organization is to ensure adequate, affordable, long-term water supply for Southwest Missouri. Understanding that continued high growth in Southwest Missouri will put a strain on water resources, a 16-county footprint was established to provide a collaborative means to work together to meet a critical and certain need for future water supply. Within the 16-county footprint, SWMO has a membership which includes eleven organizations. Current members include Nixa, Branson, Carthage, CU, Joplin, Monett, Mt. Vernon, Stockton, Ozark, Republic, and Pierce City. Willard is in the process of becoming a member.

Extensive research has been conducted on water demand, supply, and future sources. Looking ahead to 2060, research studies identified that water needs in the future exceeded current supplies by 53 million gallons per day (MGD). SWMO, working with the Corps of Engineers (COE), has identified Stockton Lake as the best available resource for the lion's share of needed water to fill the gap. For the past several years, SWMO has been working through a water allocation request with COE to secure 38 MGD from Stockton. The COE Kansas City District has prepared a Feasibility Study for the requested allocation. This study is nearing completion and to negotiate the contract with COE, SWMO needs to know exactly how much its members can take and pay for.

The City of Nixa is a member of SWMO and a participating dues paying member of the Joint Municipal Water Utility Commission (JMUC) established as a subsidiary of SWMO. The JMUC was formed as the legal entity allowing members to acquire and pool the funds necessary to acquire a water allocation from Stockton Lake and to secure the infrastructure necessary to transfer that allocation from the lake to member jurisdictions.

## **Analysis:**

The City of Nixa is requesting to purchase 2.6% of the water allocation for a total of 2,429 acre-feet of storage space, equating to a yield of approximately 1 million gallons per day.

It is anticipated that the allocation will be approved by the COE in the first half of 2024 for 92,250 acre-feet of storage which equates to 38 million gallons per day. When approved, JMUC will have to sign a contract committing it to take and pay for a specific number of acre-feet of water. To negotiate this contract with the Corps, JMUC needs to know exactly how much its members intend to take and pay for. JMUC's contract with the COE will require it to pay a fixed cost (approximately \$46 million), which will be amortized over 30 years with annual payments of approximately \$2.75 million. JMUC has received authorization from the Missouri DNR to use the State Revolving Fund to purchase the allocation from the COE on a 30-year note at 1.07% interest. Following the execution of a contract with the Corp, SWMO, through the JMUC will enter a "pass through" contract with each participating member to suballocate the storage space and allocate costs proportionally.

As provided above, the City of Nixa is requesting 2.6% of the anticipated allocation space yielding approximately 1 million gallons per day of water for the city. The pass-through contract ultimately executed by the city will provide a yearly payment of \$72,368.00 for 30 years to JMUC for the necessary water allocation.

The non-binding MOU is being requested to provide SWMO with a level of commitment that the City of Nixa is willing to enter into a contract with JMUC for the purchase of the requested percentage of allocation once approved by the COE.

## **Recommendation:**

This year's budget includes monies necessary to pay for the first installment of the 30-year contract and the proposed rate study, if adopted, includes the means necessary to budget for the proposed yearly contract with JMUC totaling \$72,368.00. This water allocation is viewed by staff as a necessary investment to secure future water supplies for the city. Therefore, staff is recommending approval of the MOU providing a commitment to contract with JMUC for purchase of an allocation of water storage from Stockton Lake once approved by the COE.

MEMO PREPARED BY:

**Travis Cossey** | Asst. Director Nixa Utilities & Public Works

**RESOLUTION NO. 2024-06**

1 **A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY**  
2 **ADMINISTRATOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH**  
3 **SOUTHWEST MISSOURI JOINT MUNICIPAL WATER COMMISSION (“JMUC”)**  
4 **REGARDING REALLOCATED WATER STORAGE SPACE IN STOCKTON LAKE.**

5  
6 **WHEREAS** the City of Nixa, is a member of JMUC; and

7  
8 **WHEREAS** JMUC is a Joint Municipal Utility Commission formed to develop water  
9 supply projects to meet projected needs of its members; and

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11 **WHEREAS** JMUC has been working with the U.S. Army Corps of Engineers  
12 (“Corps”) to secure a storage contract authorizing JMUC and its members to use such  
13 storage for water supply purposes; and

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15 **WHEREAS** JMUC anticipates that a storage contract will be approved by Corps to  
16 authorize JMUC members to utilize portions of Stockton Lake; and

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18 **WHEREAS** it is anticipated that such a contract will authorize the City to purchase  
19 2.6% of the water allocation for a total of 2,429 acre-feet of storage space, equating to a  
20 yield of approximately 1 million gallons per day; and

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22 **WHEREAS** JMUC has requested that its members authorize the execution of a  
23 non-binding Memorandum of Understanding (“MOU”); and

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25 **WHEREAS** the execution of the MOU by JMUC members will assist JMUC with  
26 advancing its negotiations with the Corps by granting JMUC a sense of the amount of  
27 water storage each of its members is prepared to utilize; and

28  
29 **WHEREAS** the City Council desires to authorize the execution of the MOU  
30 attached hereto as “Resolution Exhibit A.”

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32 **NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF**  
33 **NIXA, AS FOLLOWS, THAT:**

34  
35 **SECTION 1:** City Council hereby authorizes the City Administrator, or designee,  
36 to execute a MOU with JMUC. Said MOU shall be in substantially similar form as the  
37 document attached hereto, and incorporated herein by this reference, as “Resolution  
38 Exhibit A.”

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40 **SECTION 2:** The City Administrator and the officers of the City are hereby  
41 authorized to do all things necessary or convenient to carry out the terms and intent of  
42 this Resolution.

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44 **SECTION 3:** This Resolution shall be in full force and effect from and after its final  
45 passage by the City Council and after its approval by the Mayor, subject to the provisions  
46 of section 3.11(g) of the City Charter.

**RESOLUTION NO. 2024-06**

47 **ADOPTED BY THE COUNCIL THIS 22<sup>nd</sup> DAY OF January, 2024.**

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ATTEST:

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52 \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
CITY CLERK

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55 **APPROVED BY THE MAYOR THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.**

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ATTEST:

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MAYOR

\_\_\_\_\_  
CITY CLERK

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63 APPROVED AS TO FORM:

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CITY ATTORNEY

**RESOLUTION EXHIBIT A**

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MEMORANDUM OF UNDERSTANDING  
BETWEEN SOUTHWEST MISSOURI WATER  
AND  
City of Nixa  
REGARDING  
REALLOCATED WATER STORAGE SPACE IN STOCKTON LAKE

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between Southwest Missouri Joint Municipal Water Commission (“JMUC”) and \_City of Nixa\_\_\_ (“User”);

WITNESSETH THAT:

WHEREAS, JMUC is a Joint Municipal Utility Commission formed under the Joint Municipal Utility Commission Act, Revised Statutes of Missouri Section 393.700 *et seq.*;

WHEREAS, User is a member of JMUC;

WHEREAS, JMUC was created to develop water supply projects for Southwest Missouri to meet projected future needs for User and other members;

WHEREAS, to this end, JMUC has been working with the U.S. Army Corps of Engineers (“Corps”) for many years to secure a “storage contract” authorizing JMUC and/or its members to use storage in that project for water supply purposes;

WHEREAS, JMUC has reason to believe that the Corps’ leadership will sign a Record of Decision authorizing a contract substantially similar to the draft attached as Exhibit A in the near future (the “Storage Contract”);

WHEREAS, JMUC anticipates the Storage Contract will grant permanent right to utilize 92,250 acre-feet of storage space in Stockton Lake to store water for municipal and industrial water supply purposes; a storage volume that is expected to provide a safe yield of approximately 38 million gallons per day (“mgd”);

WHEREAS, JMUC further anticipates the Storage Contract will obligate JMUC to make annual payments to the Corps of approximately \$2.75 million; occasional additional payments for “repair, rehabilitation, and maintenance costs,” which will be incurred as needed; and additional annual payments to cover “operations and maintenance costs” at Stockton Lake;

WHEREAS, before executing any contract with the Corps, JMUC must have agreements in place with participating members to pay these costs;

WHEREAS, JMUC anticipates entering into “pass-through” subcontracts with its members to suballocate a portion of JMUC’s storage space to the member in exchange for an agreement to pay a portion of JMUC’s costs;

WHEREAS, JMUC anticipates that the subcontracts will be substantially similar to the Template Contract attached to this MOU as Exhibit B (the “Subcontract”);

WHEREAS, to finalize the Subcontracts and to advance its negotiations with the Corps, JMUC must have a strong sense of the amount of storage each of its members is prepared to take, even if the storage volumes that will be contracted to each member may change slightly at the margins;

WHEREAS, JMUC has requested that each of its members make a *non-binding* commitment to enter into subcontracts substantially similar to the Draft Subcontract for a specific volume of storage at a specific price; and

WHEREAS, while the requested commitment is explicitly non-binding, User understands that JMUC will rely on it for planning purposes and that any departure from it could jeopardize JMUC’s ultimate ability to secure any contract with the Corps.

NOW, THEREFORE, this memorandum documents the following understanding:

1. On the terms specified in the Draft Subcontract, User anticipates contracting for 2,429 acre-feet of storage space, which amounts to 2.6 % of the total storage space available to JMUC and is expected to provide a safe yield of 1.0 million gallons per day on an average annual basis.

2. In exchange for the storage rights provided in Paragraph 1, User anticipates paying 2.6 % of JMUC’s annual costs in addition to other costs specified by the Draft Subcontract, which are estimated to be approximately \$ 72,368 per year.

City of Nixa

SOUTHWEST MISSOURI JOINT MUNICIPAL  
WATER COMMISSION

By: \_\_\_\_\_

By: \_\_\_\_\_  
Roddy Rogers, Executive Director

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

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



WATER STORAGE AGREEMENT  
BETWEEN THE DEPARTMENT OF THE ARMY  
AND  
SOUTHWEST MISSOURI WATER

FOR  
REALLOCATED WATER STORAGE SPACE IN STOCKTON LAKE

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between THE DEPARTMENT OF THE ARMY (hereinafter called the "Government") represented by the District Engineer executing this agreement, and Southwest Missouri Water (hereinafter called the "User");

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1954 (Public Law 83-780, 83<sup>rd</sup> Congress), authorized the construction, operation, and maintenance of Stockton Lake on the Sac River, Missouri, (hereinafter called the "Project"); and

WHEREAS, the User desires to enter into an agreement with the Government for the use of storage for municipal and industrial water supply added to the Project by reallocation, and for payment of the cost thereof in accordance with the provisions of the Water Supply Act of 1958, as amended (43 U.S.C. 390b-f); and

WHEREAS, the User as shown in Exhibit "A", attached to and made a part of this agreement, is empowered to enter into an agreement with the Government and is vested with all necessary powers of accomplishment of the purposes of this agreement.

NOW, THEREFORE, the Government and the User agree as follows:

ARTICLE 1 - Water Storage Space.

a. Project Modification. The Government, subject to the directions of Federal law and any limitations imposed thereby, shall modify the allocation of storage space in the Project so as to include therein space for the storage of water by the User.

b. Rights of User.

(1). The User shall have the right to utilize an undivided 11.7 percent (estimated to contain 75,500 acre-feet after adjustment for sediment deposits) of the usable conservation storage space in the Project (see column (5) of Exhibit B-1) between elevations 830.0 feet and 868.9 feet above National Geodetic Vertical Datum (NGVD), which is estimated to contain 645,575 acre-feet after adjustment for

sediment deposits. The User's storage space is to be used to impound water for present demand or need for municipal and industrial water supply.

(2). The User shall have the right to withdraw water from the lake, or to request releases to be made by the Government through the outlet works of the Project, subject to the provisions of Article 1c and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appurtenances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the District Engineer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, under the authority of and in accordance with the provisions of 10 U.S.C. 2668 and such other authorities as may be necessary. Subject to the conditions of such easement, the User shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges granted under this agreement.

c. Rights Reserved. The Government reserves the right to control and use all storage in the Project in accordance with authorized Project purposes. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life and/or property, including the right not to make downstream releases during such periods of time as are deemed necessary, in its sole discretion, to inspect, maintain, or repair the Project.

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

e. Sedimentation Surveys.

(1). Sedimentation surveys will be made by the District Engineer during the term of this agreement at intervals not to exceed fifteen (15) years unless the District Engineer determines that such surveys are unnecessary. When, in the opinion of the District Engineer, the findings of such survey indicate any Project purpose will be affected by unanticipated sedimentation distribution, there shall be an equitable redistribution of the sediment reserve storage space among the purposes served by the Project including municipal and industrial water supply, recognizing that the Project will continue to be regulated to reduce flooding downstream from the dam. Adjusted pool elevations will be rounded to the nearest one-half foot. Such findings and the storage space allocated to municipal and industrial water supply shall be defined and described as an exhibit, which will be made a part of this agreement, and the water control manual will be modified accordingly.

(2). The Government assumes no responsibility for deviations from estimated rates of sedimentation, or the distribution thereof. Such deviations may cause unequal distribution of sediment reserve storage greater than estimated, and/or encroachment on the total storage at the Project.

f. Dependable Yield Mitigation Storage. In addition to the 75,500 acre-feet of water supply storage space acquired by the User, the User will pay for an additional 19,250 acre-feet of dependable yield mitigation storage.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User. The User has the



full responsibility to acquire in accordance with State laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this agreement. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the User except as such controversies may affect the operations of the Project by the Government.

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

ARTICLE 4 - Measurement of Withdrawals and Releases. The User agrees to furnish and install, without cost to the Government, suitable meters or measuring devices satisfactory to the District Engineer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The User shall furnish to the Government monthly statements of all such withdrawals. Prior to the construction of any facilities for withdrawal of water from the Project, the User will obtain the District Engineer's approval of the design, location and installation of the facilities including the meters or measuring devices. Such devices shall be available for inspection by Government representatives at all reasonable times. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the User and approved by the District Engineer and shall be subject to Article 1c. The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

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

a. First Cost of Storage.

(1). The User shall repay to the Government, at the times as hereinafter specified, the amounts stated below which, as shown in Exhibit B-II attached to and made a part of this agreement, constitute the entire actual amount of the first cost of storage allocated to the water storage right acquired by the User under this agreement. The amount of the cost is based on updated cost of storage. The costs shown in Exhibit B are for 94,750 acre-feet of storage space. Of this space 75,500 acre-feet are for the User and 19,250 acre-feet are for dependable yield mitigation storage. The interest rate to be used for purposes of computing interest on the unpaid balance will be the yield rate adjusted at five-year intervals as determined by the Secretary of the Treasury on the basis set forth in Section 932 of the 1986 Water Resources Development Act. For this agreement, the starting interest rate shall be that rate in effect at the time the agreement is approved. For FY23, such rate is 2.875 percent. Should the agreement not be signed in FY23, the amounts due herein will be adjusted to reflect the application of the appropriate rate.

(2). The cost allocated to the storage space indicated in Article 1b(1) is currently estimated at \$42,100,000 on the basis of the costs presented in Exhibit B-II. These costs shall be repaid within the life of the Project in not to exceed 30 years from the date this agreement is executed by the Secretary of the Army or his duly authorized representative. The payments shall be in equal consecutive annual installments, adjusted at 5-year intervals as shown in Exhibit "C". The first payment shall be due and payable within 30 days after the User is notified by the District Engineer that this agreement is executed.

Annual installments thereafter will be due and payable on the anniversary date of the date of notification. Except for the first payment, which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the first cost of storage allocated to the storage within 30 years from the above date.

b. Repair, Rehabilitation, and Replacement (RR&R) Costs. The User will be required to pay 6.60 percent of the cost of joint-use RR&R of Project features. Payment of these costs shall be made either incrementally during construction or in lump sum (including interest during construction) upon completion of construction.

c. Annual Operation and Maintenance (O&M) Expense.

The User will be required to pay 6.60 percent of the annual experienced joint-use O&M expense of the Project.

Payments for O&M expense are due and payable in advance on the date for payment of the first cost of storage as set forth in Article 5a(2) and shall be based on O&M expense for the Project in the Government fiscal year most recently ended. The amount of each annual payment will be the actual experienced O&M expense (allocated joint-use) for the preceding fiscal year or an estimate thereof when actual expense information is not available.

d. Prepayment. The User shall have the right at any time to prepay the indebtedness under this Article in whole or in part, with accrued interest thereon to the date of such prepayment.

e. Delinquent Payments. Any delinquent payment owed by the User shall be charged interest at the Current Value of Funds Rate as determined by the Secretary of the Treasury that is applicable on the date that the payment became delinquent, with such penalty charge and administrative fee as may be required by Federal law or regulation. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by the User.

ARTICLE 6 - Duration of Agreement. This agreement shall become effective when signed by the Secretary of the Army or his duly authorized representative and shall continue in full force and effect for the life of the Project.

ARTICLE 7 - Permanent Rights to Storage. Upon completion of payments by the User, as provided in Article 5a herein, the User shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 U.S.C. 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

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

b. The User shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation, or replacement of Project features which may be required to continue satisfactory operation of the Project. The District Engineer will establish such costs and repayment arrangements shall be in writing in accordance with the terms and conditions set forth in Article 5b for reconstruction,

rehabilitation, and replacement costs, and be made a part of this agreement.

c. Upon completion of payments by the User as provided in Article 5a, the District Engineer shall redetermine the storage space for municipal and industrial water supply in accordance with the provisions of Article 1e. Such redetermination of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

d. The permanent rights of the User under this agreement shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the Project, such rights may be continued subject to the execution of a separate agreement or additional supplemental agreement providing for:

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

(2). Terms which will protect the public interest; and,

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

ARTICLE 8 - Release of Claims. The User shall hold and save the Government, including its officers, agents and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the User or as a result of the construction, operation, or maintenance of the water supply facilities and appurtenances thereto owned and operated by the User except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE 9 - Transfers and Assignments.

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

b. Regarding approval of assignments, references to restriction of assignments shall not apply to any transfer or assignment to the United States Department of Agriculture, Rural Economic Community Development (RECD), formerly Farmers Home Administration, or its successor agency, or nominee, given in connection with the pledging of this water storage agreement as security for any loans or arising out of the foreclosure or liquidation of said loans. The User will notify the Corps in writing 15 days prior to applying for a RECD loan. A copy of the final loan instrument will be furnished to the Corps for their record.

ARTICLE 10 - Officials Not to Benefit. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

ARTICLE 11 - Covenant Against Contingent Fees. The User warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the User for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this agreement without liability or in its discretion to add to the price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 12 - Protective Covenant. [Should be deleted when not applicable]

a. In order to utilize the water storage space, the User must acquire a loan from \_\_\_\_\_. Pending approval of this loan, the Government shall reserve for the User \_\_\_\_\_ acre-feet of storage for municipal and industrial water supply purposes for a period of up to \_\_\_\_ months. For this privilege, the User shall pay the Government \$1.00 per acre-foot of storage space per year for a total of \$\_\_\_\_\_. The payment is not refundable and shall be due and payable within 30 days after the User is notified by the District Engineer that the agreement has been approved. Should the User be unable to secure said loan it shall notify the District Engineer of said failure and the agreement shall be considered terminated at that time.

b. In the event of any termination pursuant to this Article, the User shall, upon request of the District Engineer, promptly remove at User's own expense, any facilities constructed on Project land for water withdrawal and restore premises around the removed facilities to a condition satisfactory to the District Engineer.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State, and local laws and regulations concerning environmental pollution. Particular attention should be given to:

a. Reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters;

b. Reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion;

c. Minimization of noise levels;

d. On-site and off-site disposal of waste and spoil; and,

e. Prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

a. Compliance. In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal and State laws and regulations, including but not limited to: 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act

(formerly 40 U.S.C. 327 et seq.), the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)), and the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655).

b. Civil Rights Act. The User furnishes, as part of this agreement, an assurance (Exhibit D) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 U.S.C. 2000d, et seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 195 of Title 32, Code of Federal Regulations.

c. Regulatory Program. Any discharges of water or pollutants into a navigable stream or tributary thereof resulting from the User's facilities and operations undertaken under this agreement shall be performed only in accordance with applicable Federal, State, and local laws and regulations.

d. Lobbying Activities. The User furnishes, as part of this agreement, a certification (Exhibit E and if applicable, Standard Form-LLL "Disclosure of Lobbying Activities") that it will comply with Title 31 U.S.C. Section 1352 of the limitation on use of appropriated funds to influence certain Federal contracting and financial transactions (Public Law 101-121, October 23, 1989) and Federal Acquisition Regulation 52.203-12 issued pursuant thereto.

#### ARTICLE 15 - Definitions.

a. First cost of storage. This is the cost assigned to the Users right to the storage space in the project. In this Agreement, the first cost of storage was developed by the [insert appropriate term, e.g. benefits foregone, updated cost of storage, etc.] method and is summarized in Exhibit B-II.

b. Interest Payments.

(1). Interest on the unpaid balance. When the Project cost is amortized, this is the interest on the unpaid balance (see Exhibit C). When payments are made in "lump sum," there is no amortization schedule and therefore, no "interest on the unpaid balance."

c. Specific costs. The costs of Project features normally serving only one particular Project purpose.

d. Joint-use costs. The costs of features used for any two or more Project purposes.

e. Annual operation and maintenance (O&M) expense. Annual expenses funded under the O&M, General account. These expenses include the day-to-day costs to operate and maintain the Project as well as O&M costs which are not capitalized.

f. Repair, rehabilitation and replacement (RR&R) costs. Costs funded in part under the Operation and Maintenance, General, or Construction, General accounts but not associated with first cost of storage. Such expenditures are for costly, infrequent work and are intended to ensure continued satisfactory operation of the Project. For the purposes of this agreement the term "reconstruction" used in Article 8 "Permanent Rights to Storage" shall be included in this definition of repair, rehabilitation and replacement; repayment of those costs shall be the same as described in Article 5b.

g. Fiscal Year. Refers to the Government's fiscal year. This year begins on 1 October and ends on 30 September.

h. Life of the Project. This is the physical life of the Project.

i. District Engineer. Refers to the District Engineer of the Kansas City District of the United States Army Corps of Engineers, or his/her successor or designee.

j. Dependable Yield Mitigation Storage. The use of the reallocated space for water supply storage diminishes the dependable yield of water to prior water supply users. To compensate for that loss, additional conservation storage, above and beyond the storage required by the new user, is provided and made available to the prior users. The new user pays for this space. The reallocated storage mitigation space becomes part of the total storage space jointly shared by all the water supply users.

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

THE DEPARTMENT OF THE ARMY

SOUTHWEST MISSOURI WATER

\_\_\_\_\_  
Travis J. Rayfield  
Colonel, U.S. Army  
District Commander

\_\_\_\_\_  
[ NAME ]  
Executive Director

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT A: CERTIFICATION**

I, Lewis Jones, Attorney for Southwest Missouri Water, have reviewed the foregoing agreement executed by \_\_\_\_\_, and as principal legal officer of/for Southwest Missouri Water certify that \_\_\_\_\_ is legally and financially capable of entering into the contractual obligations contained in the foregoing agreement and that, upon acceptance by the Department of the Army, it will be legally enforceable.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_

Attorney for Southwest Missouri Water

## EXHIBIT B: COST COMPUTATIONS

### I - LAKE STORAGE

Feature  (1)	Elevation (feet, NGCD)  (2)		Usable Storage (acre-feet) <sup>1/</sup>  (3)	Percent of	
				Usable Storage <sup>2/</sup>  (4)	Conservation Storage <sup>3/</sup>  (5)
Flood Control	868.9	893.9	789,814	55.02	
Conservation	830.0	868.9	645,575	44.98	100.00
Water Supply			94,750	6.60	14.68
User			75,500	5.26	11.70
DYMS to support User			19,250	1.34	2.98
Other Water Supply Users			50,000	3.48	7.75
Other Conservation Purposes Hydropower	830.0	868.9	520,075	36.23	80.56
Total Usable Storage			1,435,389	100.00	

Notes:

<sup>1/</sup> Storage remaining after 100 years of sedimentation from the date the project is operational and does not include dead storage and/or storage set aside for hydropower head.

<sup>2/</sup> Used to compute the Users cost (see Exhibits B-II and B-III).

<sup>3/</sup> This percent is used to compute the Users storage space (see Article 1b(1)).

### II - FIRST COST TO BE REPAYED BY THE USER FOR THE REALLOCATED STORAGE SPACE

ER 1105-2-100 outlines that the nonfederal sponsor will pay for the cost of water supply storage. The cost of storage is established by calculating the highest of the benefits or revenue foregone, the replacement cost, or the updated cost of storage in the federal project. The nonfederal entity shall also be responsible for an appropriate share of the annual costs that include specific and joint-use OMRR&R costs. For the Stockton Lake Reallocation, the cost of storage is based on the updated FY2023 joint-use construction cost of \$637,858,700.00. The user's cost of storage is determined by their proportion of usable storage. Usable storage is considered the storage volumes in both the multipurpose pool and the flood control pool, which are 789,814 and 645,575 AF, respectively. Annual OMRR&R costs are included. The OMRR&R costs represent the water supply user's portion of the annual joint-use O&M or repair, rehabilitation, and replacement (RR&R) expenditures. Southwest Missouri Regional Water is responsible for 6.60% of the joint-use construction costs or \$42,100,000. In addition, the user would be responsible for 6.60% percent of the annual O&M and RR&R costs. The O&M costs were based on actual FY2022 joint-use expenditures of \$2,003,000, of which Southwest Missouri Regional Water would be responsible for \$130,000. Based on current information, there have not been significant RR&R costs incurred previously and none are projected for the near future. Table II describes the costs.



**EXHIBIT B: (Continued)**

**II – COST OF STORAGE**

<b>Parameter</b>		
Total storage required (acre-feet)	94,750	
Water supply yield (mgd)	39	
Interest rate	2.875%	
Repayment period	30	
Flood control storage	789,814	
Multipurpose storage (830 feet to 867 feet NGVD 29)	645,575	
Inactive storage (Below 830 feet NGVD 29)	221,267	
Usable Storage	1,435,389	
Storage required as percent of useable storage		6.60%
	<b>Total costs</b>	<b>Costs as a Percent of Usable Storage (3.19%)</b>
Joint use project cost	\$637,858,700.00	\$42,100,000
Interest and Amortization Factor		0.48795
Annualized joint use project cost		\$2,054,290
Estimated Annual O&M	\$2,003,000	\$130,000
Total annual repayment		\$2,184,290
*Estimate based on FY23 costs and FY23 Wtr Supply Interest Rate		

**EXHIBIT B: (Continued)**

**III - TOTAL ANNUAL COST TO USER  
FOR THE REALLOCATED WATER SUPPLY STORAGE**

<b>Item</b>	<b>Type of Use</b>	<b>Computation</b>	<b>Cost</b>
Interest and amortization	Total cost of storage space acquired by the User as determined in Exhibit B-II.	\$42,100,000 x 0.04875 factor based on 30 payments, of which 29 payments are at interest rate of 2.875%.	\$2,054,290.00
Operation and maintenance <u>1/</u>	Joint-use actual for FY22	6.60% <u>2/</u> x \$2,003,000	\$130,000.00
Repair, rehabilitation and replacement <u>3/</u>	Joint-use actual for FY22	6.60% <u>2/</u> x \$0.00	\$0.00

Notes:

1/ Payment due and payable on the date specified in Article 5(a)(2).

2/ Percent of Users share of the Usable storage space in the project (column (4) of exhibit B-I).

3/ Repair, rehabilitation and replacement costs are payable only when incurred as specified in Article 5(b).

## EXHIBIT C: AMORTIZATION SCHEDULE PRESENT DEMAND

(Example 1/)

TOTAL COST: \$42,100,000 \_\_\_\_\_  
 NUMBER OF PAYMENTS: 30  
 INTEREST RATE, PERCENT 2/ 2.875%

Annual Payment Number	Amount of Payment (\$)	Interest (\$)	Allocated Cost (\$)	Balance of Allocated Cost (\$)
1	2,054,290.09	0.00	2,054,290.09	40,045,709.91
2	2,054,290.09	1,151,314.16	902,975.93	39,142,733.99
3	2,054,290.09	1,125,353.60	928,936.48	38,213,797.50
4	2,054,290.09	1,098,646.68	955,643.41	37,258,154.10
5	2,054,290.09	1,071,171.93	983,118.16	36,275,035.94
6	2,054,290.09	1,042,907.28	1,011,382.80	35,263,653.14
7	2,054,290.09	1,013,830.03	1,040,460.06	34,223,193.08
8	2,054,290.09	983,916.80	1,070,373.29	33,152,819.79
9	2,054,290.09	953,143.57	1,101,146.52	32,051,673.28
10	2,054,290.09	921,485.61	1,132,804.48	30,918,868.80
11	2,054,290.09	888,917.48	1,165,372.61	29,753,496.19
12	2,054,290.09	855,413.02	1,198,877.07	28,554,619.12
13	2,054,290.09	820,945.30	1,233,344.79	27,321,274.33
14	2,054,290.09	785,486.64	1,268,803.45	26,052,470.88
15	2,054,290.09	749,008.54	1,305,281.55	24,747,189.34
16	2,054,290.09	711,481.69	1,342,808.39	23,404,380.94
17	2,054,290.09	672,875.95	1,381,414.13	22,022,966.81
18	2,054,290.09	633,160.30	1,421,129.79	20,601,837.02
19	2,054,290.09	592,302.81	1,461,987.27	19,139,849.75
20	2,054,290.09	550,270.68	1,504,019.41	17,635,830.34
21	2,054,290.09	507,030.12	1,547,259.96	16,088,570.38
22	2,054,290.09	462,546.40	1,591,743.69	14,496,826.69
23	2,054,290.09	416,783.77	1,637,506.32	12,859,320.37
24	2,054,290.09	369,705.46	1,684,584.63	11,174,735.75
25	2,054,290.09	321,273.65	1,733,016.43	9,441,719.31
26	2,054,290.09	271,449.43	1,782,840.66	7,658,878.66
27	2,054,290.09	220,192.76	1,834,097.32	5,824,781.33
28	2,054,290.09	167,462.46	1,886,827.62	3,937,953.71
29	2,054,290.09	113,216.17	1,941,073.92	1,996,879.79
30	2,054,290.09 3/	57,410.29	1,996,879.79	0.00

Notes:

1/ An amortization schedule is applicable to those projects which will be repaid over time in lieu of during construction.

2/ In accordance with Section 932 of the Water Resources Development Act of 1986, this interest rate will be adjusted at five year intervals throughout the repayment period. The rate is the yield rate as determined

by the Secretary of the Treasury plus  $1/8$  %.

3/ The last payment will be adjusted upward or downward to assure all costs are repaid within 30 years of approval of the agreement.

## EXHIBIT D: ASSURANCE OF COMPLIANCE

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### ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED; THE AGE DISCRIMINATION ACT OF 1975; AND THE REHABILITATION ACT OF 1973, AS AMENDED

The party executing this assurance, being the applicant recipient of Federal financial assistance under the instrument to which this assurance is attached; HEREBY AGREES THAT, as a part of its obligations under the aforesaid instrument, it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 195), issued as Department of Defense Directive 5500.11, pursuant to that title; The Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), to the end that in accordance with the aforementioned Title, Directive and Acts, no person in the United States shall on the ground of race, color, age, sex, religion, handicap or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from the Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant-recipient by the Department of the Army, or if such assistance is in the form of personal property or real property, or interest therein or structure thereon, then this assurance shall obligate the applicant-recipient or in the case of any transfer of such property, any transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for the period during which it retains ownership or possession of the property whichever is longer. In all other cases, this assurance shall obligate the applicant-recipient for the period during which the Federal financial assistance is extended to it by the Department of the Army. The Department of the Army representatives will be allowed to visit the recipient's facilities. They will inspect the facilities to ensure that there are no barriers to impede the handicap's accessibility in either programs or activities.

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

Date \_\_\_\_\_

\_\_\_\_\_  
(Applicant-Recipient)

By \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Applicant-Recipient's Mailing Address)

**EXHIBIT E: CERTIFICATION REGARDING LOBBYING**

**STOCKTON LAKE WATER SUPPLY STORAGE REALLOCATION**  
**SOUTHWEST MISSOURI WATER**

1. The undersigned certifies, to the best of their knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the water supply agreement for the SOUTHWEST MISSOURI WATER, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. This form is available at <http://contacts.gsa.gov/webforms.nsf>.

c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SOUTHWEST MISSOURI WATER

BY \_\_\_\_\_

TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

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WATER STORAGE AGREEMENT  
BETWEEN THE SOUTHWEST MISSOURI JOINT MUNICIPAL WATER UTILITY COMMISSION  
AND  
[ \_\_\_\_\_ ]  
FOR  
THE USE OF WATER STORAGE SPACE IN STOCKTON LAKE

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between Southwest Missouri Joint Municipal Water Commission (“JMUC”) and \_\_\_\_ (“User”);

WITNESSETH THAT:

WHEREAS, JMUC is a Joint Municipal Utility Commission formed under the Joint Municipal Utility Commission Act, Revised Statutes of Missouri Section 393.700 *et seq.*;

WHEREAS, JMUC was created to develop water supply projects for Southwest Missouri to meet projected future needs;

WHEREAS, Stockton Lake (the “Project”) is a multipurpose reservoir owned and operated by the United States Army Corps of Engineers (the “Corps”);

WHEREAS, on \_\_\_\_\_, 2023, JMUC entered into a contract with the United States (the “2023 Storage Contract”), a copy of which is attached as Exhibit A to this agreement;

WHEREAS, the 2023 Storage Contract authorizes JMUC to utilize 92,250 acre-feet of storage space in the Project to store water for municipal and industrial water supply purposes;

WHEREAS, the 2023 Storage Contract obligates JMUC to pay the following to the Corps:

- (1) “First costs,” as required by Article 5.a;
- (2) “Repair, rehabilitation, and replacement costs” as required by Article 5.b;
- (3) “Operations and maintenance,” as required by Article 5.c;
- (4) Any liabilities incurred under the “release of claims” in Article 8.

WHEREAS, User wishes to utilize a portion of the storage space contracted to JMUC under the terms set forth in this agreement; and

WHEREAS, a separate agreement (the “Delivery Agreement”) will be entered into between JMUC and User to document the terms under which water stored in Stockton Lake will be delivered to User.



TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

NOW, THEREFORE, JMUC and User agree as follows:

ARTICLE 1. User's Storage Space

a. User's Storage Space shall be \_\_\_ acre-feet. If at any time JMUC's Storage Space is reduced due to sedimentation as provided in Article 1.e of the 2023 Storage Contract, User's Storage Space shall be reduced proportionally.

ARTICLE 2. Water Storage Rights

a. User shall have the right to utilize water from the Project to the extent water is available in User's Storage Space. The storage accounting system described in Exhibit B will be utilized to determine how much water is available in User's Storage Space.

b. This contract is for storage space only. It does not include delivery of water from the Project to User, which will be addressed in a separate Delivery Agreement.

ARTICLE 3. Payments

a. In consideration for the water storage rights described in Articles 1 and 2, User shall pay to JMUC the following charges:

(1) Unit Charge. Costs incurred by JMUC to administer the 2023 Storage Contract will be allocated proportionally based on the percentage of JMUC's Storage Space allocated to User. The Unit Charge for storage space (\$ per acre-foot) will be calculated by dividing JMUC's Storage Cost as defined in paragraph b by JMUC's Storage Space. User shall pay the Unit Charge for each acre-foot in User's Storage Space.

(2) Carrying Cost for Uncontracted Storage Space. Until all of JMUC's Storage Space has been contracted to individual users, charges associated with Uncontracted Storage Space will be borne by users with contracts. Therefore, User will pay a percentage of the Unit Charge for each acre-foot of Uncontracted Storage Space. The percentage borne by User will be determined by dividing User's Storage Space by the total number of acre-feet of Contracted Storage Space. Any payments by User pursuant to this subparagraph will be credited to User's Uncontracted Storage Investment Account as described in Article 4.

(3) Step-up Payment for Uncovered Obligations. If any user fails to remit payment to JMUC as required by subparagraphs (1) and (2) above, the resulting Uncovered Obligation will be paid by JMUC from the Contingency Fund described in Article 7 to the extent funds are available. In the event the Contingency Fund is exhausted, any remaining Uncovered Obligation will be borne by users. User will pay a percentage of the Uncovered Obligation equal to the number of acre-feet in User's Storage Space divided by the total number of acre-feet contracted to users who are able to fulfill their financial obligations to JMUC. Any payments by user pursuant to this subparagraph will be credited to User's Step-up Account as described in Article 5.

TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

JMUC's Storage Costs. JMUC's Storage Costs will include (1) all payments due to the Corps under the 2023 Storage Contract, (2) an additional 10% charge to be added to the Contingency Fund, unless the balance of the Contingency Fund exceeds the level specified in Article 7; and (3) an charge to cover administrative expenses related to the storage contract

b. Invoicing. The Corps will invoice JMUC annually. JMUC will distribute copies of all invoices received from the Corps to User and other participating members promptly after receiving them, along with an invoice itemizing the charges due from User. Payment will be due from User within 30 days of invoicing by JMUC.

ARTICLE 4. Uncontracted Storage Space

a. Any payments by User under Article 3.a(2) for Uncontracted Storage Space will be repaid to the User with interest when Uncontracted Storage Space is contracted to a new user. The accounting procedures described in Article 4.b through 4.d will be employed to determine the amount to be repaid by JMUC to User.

b. Each payment by User required under Article 3.a(2) will be credited to the User's Uncontracted Storage Space Investment Account.

c. The User's Uncontracted Storage Space Investment Account will collect interest at an annual rate equal to the greater of (a) 7% per annum; or (b) the interest rate specified by Article 5 of the 2023 Storage Contract, plus 1%.

d. When Uncontracted Storage Space is contracted by JMUC to a new user:

(1) The contract between JMUC and the new user will be materially identical to this agreement, except for the amount stated in Article 1 and the Unit Charge identified in Article 3.a(1), which will be set in accordance with subparagraph (2).

(2) The cost of Uncontracted Storage Space allocated to the new user will be at least equal to the sum of all users' Uncontracted Storage Space Investment Accounts divided by the total number of acre-feet of Uncontracted Storage, multiplied by the number of acre-feet of Storage Space placed under contract to the new user.

(3) Within 30 days of receiving payment from a new user for any Uncontracted Storage Space placed under contract, JMUC will remit to User an amount equal to the balance of User's Uncontracted Storage Space Investment Account divided by the Total Uncontracted Storage Space Investment Account for all users, multiplied by the cost of Uncontracted Storage contracted to the new user.

(4) Any payments to the User under Article 4.d(3) will be debited to the User's Uncontracted Storage Space Investment Account.

TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

ARTICLE 5. Step-Up Payments

a. If any user fails to remit payment to JMUC in accordance with Article 3, and if the Contingency Fund is not sufficient to cover the resulting Uncovered Obligation to the Corps, a Step-up Payment will be required under Article 3.a(3). Any such payments will be repaid to User with interest when and if JMUC receives payment from the user that failed to make the payment. The accounting procedures described in Article 5.b through 5.d will be employed to determine the amount to be repaid to User.

b. Each Step-Up Payment under Article 3.a(3) will be credited to User's Step-up Account.

c. The User's Step-Up Account will earn interest at the annual rate specified in Article 4.c.

d. When and if JMUC receives payment for any Unpaid Obligation for which User has made Step-Up Payments under Article 3.a(3), JMUC within 30 days shall pay User an amount equal to the portion of the User's Step-up Account associated with such Unpaid Obligation.

e. JMUC will advise all users of the potential need for a Step-up Payment as soon as possible after becoming aware that such payments might be required. Step-up Payments will be due to JMUC within 30 days of invoicing by JMUC.

f. When and if, due to the default of another user, any Storage Space for which Step-Up Payments have been made under Article 3.a(3) is returned to the status of Uncontracted Storage Space under Article 6, the User's Uncontracted Storage Investment Account will be credited with an amount equal to the portion of the User's Step-Up Account associated with such storage.

ARTICLE 6. Default

If at any time User fails to make a payment required by Article 3, User's obligation to JMUC shall bear interest at the rate specified in Article 4.c. Interest shall continue to accrue until all amounts due, including interest, are received by JMUC. If User's default cannot be remedied within twelve months, JMUC may elect to terminate User's contract, in which case User's right to utilize JMUC's Storage will terminate, and User's Storage Space will become Uncontracted Storage Space. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest; nor shall it be construed as waiving any other rights of JMUC, at law or in equity, which might result from any default by User.

ARTICLE 7. Contingency Fund

A Contingency Fund will be established to enable JMUC to pay any Uncovered Obligations or other unexpected costs, including administrative expenses in excess of the amount projected or collected. The Contingency Fund will be funded gradually through annual payments described in Article 3.b(2), but no such charge will be assessed if the balance of the Contingency Fund equals or exceeds 150% of JMUC's Storage Costs in the year for which the charge would otherwise be assessed. When Contingency Funds are used to pay Uncovered Obligations, such funds will be repaid to the Contingency Fund with interest when payment is received.

TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

ARTICLE 8. Duration of Agreement

a. Unless terminated due to default by User, this agreement shall continue in full force and effect for so long as JMUC retains the right to utilize JMUC's Storage Space or for the maximum period allowed by law.

b. In the event this contract terminates under paragraph 8.a due to any legal limitation on the duration of this agreement, this agreement shall be renewable at User's option for so long as JMUC retains the right to utilize JMUC's Storage Space.

ARTICLE 9. Transfers and Assignments

User shall not transfer or assign this agreement or any of its rights under this agreement without express written approval of JMUC, whose consent shall not be unreasonably withheld.

ARTICLE 10. Miscellaneous

[To be added]

ARTICLE 11. Definitions

- a. "User's Storage Space" means number of acre-feet allocated to User as specified in Article 1.
- b. "JMUC's Storage Space" means the number of acre-feet allocated to JMUC as specified in Article 1 of the 2023 Storage Contract, subject to any adjustment for sedimentation in accordance with Article 1.e of that contract.
- c. "Contracted Storage Space" means the portion of JMUC's Storage Space that has been contracted to individual users.
- d. "Uncontracted Storage Space" means the portion of JMUC's Storage Space that has not been contracted to individual users.
- e. "Unit Charge" means the amount specified in Article 3.a(1).
- f. "User's Uncontracted Storage Investment" means the balance of User's Uncontracted Storage Space Investment Account.
- g. "Total Uncontracted Storage Investment" means the sum of all users' Uncontracted Storage Investment Accounts.
- h. "Storage Space" means physical space within the Project that is used to store water.
- i. "Step-up Payment" any payment required by Article 3.a(3).

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

TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

[USER]

SOUTHWEST MISSOURI WATER

By: \_\_\_\_\_

By: \_\_\_\_\_  
Roddy Rogers, Executive Director

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

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

TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

**EXHIBIT A: STORAGE AND WATER ACCOUNTING**

The Active Multipurpose Pool at Stockton Lake contains a total of 694,575 acre-feet of storage between 830 and 868.9 feet NGVD67. Because all water for all conservation purposes is held in this common pool, a system is needed to determine how much of the water held in the common pool is available to each user. “Storage accounting” is used for this purpose.

**1. Storage and Water Accounting Principles**

1.1 The Active Multipurpose Pool at Stockton Lake is divided into “storage accounts.” The size of each water supply storage account is equal to the volume of storage under contract. The remainder of the Active Multipurpose Pool is assigned to the federal account. The current allocation is shown in Table 1.1 below:

<b>Account holder</b>	<b>Account size (AF)</b>
Federal	549,825
City Utilities Springfield	52,250 <sup>1</sup>
JMUC	94,750
Total Active Multipurpose Storage all accounts	694,575

JMUC’s storage account will be subdivided into accounts held by its members. The same principles and formulas will be used by JMUC to manage its members accounts.

1.2 Inflows and outflows to the Active Multipurpose Pool will be tracked daily, and gains and losses will be assigned to individual storage accounts using the formulas set forth in part 2. The “account balance” for each user represents the volume of water available to that user.

1.3 The sum of all account balances will equal the total volume of water in the Active Multipurpose Pool. When the Active Multipurpose Pool is full (i.e., the pool is at or above the guide curve) all accounts are full.

1.4 Some gains and losses will be shared proportionally, while others will be credited or debited to specific accounts as described in paragraphs 1.5 and 1.6 below.

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<sup>1</sup> City of Springfield’s storage account increased from 50,000 acre-feet to 52,250 acre-feet as a result of the Dependable Yield Mitigation Storage (“DYMS”) provided by JMUC as a condition of the 2023 reallocation.

TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

1.5 Losses from evaporation will be debited proportionally based on the size of the account. Losses due to discharges from the dam, including leakage, will be debited to the federal account.

1.6 Water supply withdrawals will be debited to the account responsible for the withdrawal.

1.7 Any “state allocated inflows” will be credited to specific accounts in accordance with State law. All other gains will be distributed proportionally based on the size of the account.

1.8 When the credits applied to an individual storage account would cause it to overflow (i.e., cause the account balance to exceed the account limit, or the size of the account), any excess inflow will be distributed *pro rata* to other storage accounts with space available to store the water (i.e., accounts that are less than full). In concept, full storage accounts “spill” water into storage accounts that are not full, until the entire Active Multipurpose Pool is full.

## 2. Storage Accounting Formulas

The storage accounting principles above are implemented through the following formulas:

2.1  $S_{u,t} = S_{u,t-1} + I_u - W_u + AI_u$  Where:

$S_{u,t}$  = Storage account balance for user “u” at end of period “t” [Observed]

$S_{u,t-1}$  = Storage Account balance for user “u” at end of period “t-1” [Observed]

$I_u$  = User’s share of Calculated Inflow (“CI”) [Equation 2.2]

$W_u$  = User’s water withdrawal [Observed]

$AI_u$  = Inflow allocated to User by State law [Observed or Reported]

2.2  $I_u = [V_u / V_t] * CI$  Where:

$I_u$  = User’s share of Adjusted Inflow

$V_u$  = Volume of storage space contracted to User [Observed]

$V_t$  = Total volume of Active Multipurpose Storage Space when the inflow occurs, as defined by Top of Multipurpose Rule Curve [Observed]

CI = Calculated Inflow [Equation 2.3]

2.3  $CI = \Delta S + D + \sum W_u - \sum AI_u$  Where:

CI = Calculated Inflow

TEMPLATE FOR PROPOSED PASS-THROUGH STORAGE CONTRACTS  
ATTORNEY-CLIENT PRIVILEGED DRAFT FOR REVIEW 09/18/2023

$\Delta S$  = Change in the total volume of water in storage between period “t” and period “t-1” [*Observed.*]

D = Total discharge (powerhouse + leakage + spill + sluice) [*Observed*]

$\sum W_u$  = Sum of water supply withdrawals, all users [*Observed*]

$\sum AI_u$  = Sum of Allocated Inflows, all users [*Observed*]

The calculated inflow (“CI”) is the portion of the net inflow that is apportioned *pro rata*. This is calculated from the change in storage ( $\Delta S$ ), which is an observed value showing the net effect of all gains and losses to the Active Multipurpose Pool during the period (i.e., the day), including gains and losses from inflow, precipitation, evaporation, leakage, discharges from the dam, water supply withdrawals, and foreign water. This value is adjusted to remove the effects of any discharges from the Dam (“D”) as well as specific gains (“AI,” allocated inflows) and losses (“W,” water supply withdrawals) that need to be credited or debited to individual accounts, rather than being shared *pro rata*. See Principle 1.4.

### 3. Storage accounting procedures

The data needed to perform these calculations will be collected on a daily time step. The calculations will be performed weekly under normal circumstances, but more frequently during droughts. The Active Multipurpose Pool is drawn down as outflow exceeds inflow. The individual accounts are drawn down at different rates based on their storage. Users will be notified on a weekly basis of the available storage remaining, once their storage account balance drops below 30%.