

WATER AGREEMENT

THIS AGREEMENT made and entered into on this 16th day of July, 1990
1990.

BY AND BETWEEN

THE CITY OF AUGUSTA,
Butler County, Kansas,

hereinafter referred to
as "Augusta",

AND

THE CITY OF MULVANE,
Sedgwick County, Kansas,

hereinafter referred to:
as "Mulvane".

WITNESSETH:

WHEREAS, Augusta has sufficient quantities of water and the facilities to provide treated water to Mulvane for use by its inhabitants; and

WHEREAS, Mulvane is interested in securing for its inhabitants and customers a primary source of treated water; and

WHEREAS, Augusta is willing to supply pursuant to the terms herein certain quantities of treated water to Mulvane.

NOW THEREFORE, the parties agree to be bound as follows:

1. RIGHT TO CONNECT; PURCHASE OF TREATED WATER: Augusta hereby grants permission to Mulvane to connect its water distribution for use by its inhabitants and customers to Augusta's water pipeline which terminates near Mulvane. The connection of the water distribution system of Mulvane to the water pipeline of Augusta shall be located at a place mutually agreed upon between the parties and the connection shall be accomplished at the expense of Mulvane. Mulvane further agrees that any construction by Mulvane which occurs within the rights-of-way owned by Augusta for use in its water pipeline will be returned to the original condition as much as is practicable after the connection to the pipeline is made and all of this shall be accomplished at the expense of Mulvane. All maintenance and repair of the water pipeline shall be the responsibility of Augusta and all repair and maintenance of the water distribution system and the connection point shall be the responsibility of Mulvane. It is clearly understood between the parties that the connection is being made to the pipeline of Augusta for the purpose of receiving and purchasing treated water for consumption and distribution within the City of Mulvane.

As a part of this agreement, Augusta will allow Mulvane to use that portion of the water pipeline laying south of the connection to the Mulvane

Water System. It is understood that Mulvane intends to use the above-mentioned portion of the water pipeline to circulate water from its water well. The circulation of these water wells is necessary to maintain them as a backup system in the event of curtailment of the supply of water from Augusta. Any maintenance of the above portion of the water pipeline shall be the sole expense of Mulvane during the term of this agreement. Mulvane further agrees to return the water pipeline to Augusta in the same condition it received it, less normal wear and tear. In the event Augusta shall require the use of the above portion of the water pipeline, Augusta shall give Mulvane at least six (6) months notice of its intention to reclaim the use of such pipeline.

2. AMOUNT OF WATER TO BE PURCHASED; COST OF WATER: Effective January 1, 1991, Augusta agrees to sell and Mulvane agrees to purchase 150,000,000 gallons of treated water per year or an average of 411,000 gallons of water per day. Mulvane shall be obligated to pay for all of the water received and used at the rate set forth below.

Augusta agrees to make available to Mulvane 50,000,000 gallons of treated water per year in addition to the above stated amount. Mulvane shall be required to pay for the amount of additional gallons it actually consumes until such time as the purchase of raw water from Eldorado by Augusta exceeds 500,000,000 gallons in any calendar year. At such time as Augusta exceeds the above gallonage figure, Mulvane shall be obligated to pay for the highest number of gallons of the additional amount used during any year of this agreement and the price of the gallons used shall be the same as set forth in this agreement. Should Mulvane fail to consume in any year the amount of additional gallons set forth above, then Mulvane shall be obligated to pay to Augusta an amount equal to the cost of the raw water as paid by Augusta for the number of additional gallons represented by the difference between the highest number of additional gallons used in any year less the amount of gallons actually used.

The initial price for the purchase of treated water shall be the sum of \$ 1.50 per thousand gallons except as hereinafter provided. Mulvane shall be presented with an invoice from Augusta monthly and payment of such invoice shall be due twenty (20) days after receipt of the invoice by Mulvane. Notwithstanding the other terms of this agreement, the parties agree that beginning on January 1, 1995 and every five (5) years thereafter during the term of this agreement or any extension thereof, the parties shall review and modify the price per thousand gallons of treated water concurrent with a similar review between the City of

El Dorado and Augusta concerning the purchase of raw water by Augusta. The price of treated water to Mulvane shall be adjusted in the same amount as the cost of raw water is modified by the City of El Dorado in their review with Augusta.

3. TERM OF AGREEMENT: The term of this agreement shall be forty (40) years from the date Mulvane begins to receive water from Augusta or April 1, 1991 whichever is earlier. For the purpose of this agreement said date shall also become the anniversary date of this agreement. This agreement may be extended and renewed by mutual written consent of the parties for an additional forty (40) year term at the end of the primary term, by giving notice of Mulvane's intention to extend this agreement in writing at least six (6) months in advance of the expiration of the primary term or any extension thereof. The failure to give at least six (6) months notice in advance shall not be considered to be a default in this agreement nor shall it necessarily prevent an extension of this contract if otherwise mutually agreed by the parties. Said agreement shall be renewed and extended under the terms and conditions set forth herein unless otherwise mutually agreed.

4. METERING: All treated water sold to and received by Mulvane shall be measured by the master meter, provided by Mulvane, located in a meter vault near the connection to the water system of Mulvane at a mutually agreed upon site. All references to the term master meter in this agreement shall refer a meter or meters installed as agreed by the parties. Such meter shall be made available to Augusta during reasonable times for the purpose of reading such meter or checking its accuracy. Such meter shall be equipped with a bypass valve and other connections necessary to properly operate, test and maintain the master meter. In the event either party requires the meter vault to be moved for any reason, during the initial term of this contract, the expense of moving the vault shall be born by the party requesting the change in location.

The meter shall be calibrated annually; the expense of such calibration shall be shared equally by the parties. In addition to the annual calibration either party has the right to conduct a meter test at any time to determine the accuracy of the master meter. The party requesting the test shall bear the expense of the test. If, upon such examination and test conducted in the presence of a representative of each city, the master meter is found to be inaccurate, according to the standards of the American Water Works Association, either the meter will be repaired or a meter will be substituted in place of the defective meter. In the event an adjustment is needed on the charges to Mulvane, the adjustment shall be

date of the anniversary date of this contract and shall be computed by averaging the water used for the corresponding billing period of the three (3) prior years; or if such records are not in existence, by the best other method practical under the circumstances. The adjustment shall then be appropriately made during the next billing. Any repair or replacement of the meter shall be at the expense of Mulvane.

5. OPERATION AND MAINTENANCE: Augusta shall be fully responsible for the operation and maintenance of the water pipeline for transportation of treated water from Augusta to Mulvane. Each of the parties shall retain exclusive control of their portion of the water pipeline and water distribution system and hold the other harmless from any claim or legal action against either of them arising from construction, operation and/or maintenance of their respective systems. In the event it is necessary to stop the flow of water in the water pipeline owned by August due to the need of Augusta to make repairs on said line, then in the event of such discontinuance of service, Augusta will notify Mulvane of the period during which the water supply will be discontinued and the purpose of such discontinuance. Augusta will make every attempt to give Mulvane as much notice as is possible of the discontinuance of service.

6. DISCONTINUANCE OF SERVICE: The parties recognize there may be certain instances in which discontinuance of the supply of treated water to Mulvane may be necessary or there may be instances in which the supply of water will need to be reduced.

(a) Severe drought - In the event of a severe drought that reduces the amount of water available for human consumption to Augusta and such supply requires that the amount of water from the water pipeline be rationed, then the amount of treated water being supplied to Mulvane will be proportionately reduced in the same ratio as Augusta is reduced.

(b) Contamination - The supply of raw water to Augusta may be discontinued in the event the water supply in ElDorado Lake or the Augusta City Lake becomes contaminated to the point it is unusable for human consumption and such discontinuance shall continue until such time as all conditions have been remedied to the satisfaction of the parties and the Kansas Department of Health and Environment.

(c) Emergency - Augusta may temporarily suspend the sale of treated water to Mulvane during any emergency by reason of unforeseen catastrophe or disaster commonly referred to as "acts of God" which interfere with or otherwise disrupts the water supplies available to Augusta for human consumption. Augusta

Augusta has the right to declare an emergency at any time in which the supply of treated water to Mulvane might lead to contamination of the water pipeline of Mulvane and may continue to refuse delivery of water to Mulvane until such time as all conditions have been remedied to the satisfaction of the parties and the Kansas Department of Health and Environment.

(d) Non-Payment - The supply of treated water to Mulvane may be discontinued for the non-payment if payment is not received by Augusta within sixty (60) days of date of invoice and may continue to refuse delivery of water to Mulvane until such time as all delinquent payments are received by Augusta.

(e) At the time of any curtailment under the above terms, the number of gallons which Mulvane is obligated to purchase under this agreement will be reduced in direct proportion to the amount of curtailment and delivery of treated water to Mulvane. During times of curtailment under the above terms, the charges required of Mulvane will be proportionately curtailed also.

7. ASSIGNMENT. Neither party has the right to sublet or assign any of the duties under this agreement without prior written consent of the other party.

8. LIMITATIONS OF THE SALE OF WATER BY MULVANE: The parties agree that Mulvane shall only be entitled to sell water received from Augusta to those parties who reside within the city boundaries of Mulvane and those existing customers outside of the existing boundary of Mulvane. Prior to attempting to serve any customers outside of the city boundaries of Mulvane, consent must be obtained from Augusta to determine whether sufficient water is available for the customers the city is attempting to serve. Mulvane will provide to Augusta a list of present customers residing outside of the city boundaries prior to the receipt of treated water under this agreement.

9. CONTINGENCY: If for any reason the contract which allows Augusta to purchase raw water from the City of Eldorado is canceled or in any way curtailed and Augusta has no source or supply of raw water to replace the water provided to Augusta under the above mentioned agreement, this contract shall be at an end and no longer of any force and effect.

10. EXCLUSIVE WATER USAGE: Mulvane agrees that it will purchase treated water from Augusta only for use in its municipal water system and shall not purchase water from any other source for use in its municipal water system during the term of this agreement so long as Augusta is able to deliver treated water as provided herein.

THIS AGREEMENT made and entered into the day and year first above

written and is intended to be binding upon all the parties hereto and their lawful representatives.

THE CITY OF AUGUSTA

By [Signature]
Mayor

ATTEST

[Signature]
City Clerk

THE CITY OF MULVANE

By [Signature]
Mayor

ATTEST

[Signature]
City Clerk Notary Public

