

**RESOLUTION NO. 2010-05**

**A RESOLUTION OF THE CITY OF WASHINGTON, KANSAS, AUTHORIZING THE EXECUTION OF A POWER PURCHASE AGREEMENT, BETWEEN THE CITY OF WASHINGTON, KANSAS, AND THE KANSAS MUNICIPAL ENERGY AGENCY RELATING TO THE PURCHASE OF ELECTRICITY BY THE CITY FROM THE KANSAS MUNICIPAL ENERGY AGENCY (GRDA PROJECT) FOR SALE OR USE BY THE CITY; AND MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS**, the Kansas Municipal Energy Agency ("KMEA") is a municipal energy agency organized and existing under the laws of the State of Kansas, including K.S.A. 12-885 *et seq.*; and

**WHEREAS**, the City of Washington, Kansas (the "City") owns or operates a utility furnishing electricity, and the City is a member in good standing of KMEA; and

**WHEREAS**, the City is authorized to enter into contracts for the supply of electricity from any person, firm, corporation or other municipality for a period not in excess of forty (40) years under K.S.A. 12-825j; and

**WHEREAS**, the City desires to enter into a Power Purchase Agreement (the "Purchase Agreement") dated as of March 1, 2010 with KMEA relating to the City's purchase of electricity from KMEA during the period commencing on the date firm transmission is secured through the Southwest Power Pool ("SPP"), which is anticipated to be on or about June 1, 2013, and continuing through April 30, 2026 (the "Term") in substantially the form presented to the governing body with this Resolution; and

**WHEREAS**, subject to execution of the Purchase Agreements with the City and other cities, KMEA will contract with the Grand River Dam Authority ("GRDA"), a governmental agency of the State of Oklahoma, under a Power Purchase and Sale Agreement (the "GRDA Agreement") attached to the Purchase Agreement as *Appendix A*; and

**WHEREAS**, KMEA will use commercially reasonable efforts to develop and maintain firm transmission service arrangements with third parties for delivery of the electric power and energy to the City's Delivery Point in sufficient amounts to comply with the contractual requirements set forth herein on or before June 1, 2011; provided, however, if such arrangements are not completed on or before that date, *Appendix B* to the Purchase Agreement will be modified to reflect the quantity for which firm transmission has been granted;

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WASHINGTON, KANSAS:**

**Section 1.** The Purchase Agreement is hereby approved in substantially the form presented to the governing body this date.

**Section 2. Pledge of Revenues; Obligation to Make Payments.** The governing body of the City hereby pledges the gross revenues (the "Revenues") of the City's electric utility system or other integrated utility system of the City of which the City's electric utility system may be a part (the "System") to the City's payment obligations under the Purchase Agreement. The payments by the City

for Electricity (as defined in the Amendment) under the Purchase Agreement shall constitute operating expenses of the System. The obligation of the City to make payments to KMEA under the Purchase Agreement, whether or not reduced to judgment, shall not constitute general obligations of the City, and the City shall not be required to make such payments from any source other than the Revenues.

**Section 3. Rate Covenant.** The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Revenues sufficient to (a) pay all operating expenses of the System, including the obligation to make payments under the Purchase Agreement; (b) pay the principal of and interest on all the bonds and any other indebtedness of the System (the "System Indebtedness") as and when the same become due; and (c) provide reasonable and adequate reserves to satisfy covenants in the resolutions authorizing System Indebtedness and for the general protection and benefit of the System.

**Section 4. Execution of Purchase Agreement.** The Mayor and Clerk are hereby authorized to execute the Purchase Agreement in substantially the form presented to the governing body this date, with such changes or additions as the Mayor and Clerk shall deem necessary and appropriate, such official's signature thereon being conclusive evidence of such official's and the City's approval thereof. The Mayor and Clerk are authorized and directed to execute any and all other documents or certificates necessary to effect the purposes set forth in this Resolution and the Purchase Agreement.

**Section 4. Effective Date.** This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

ADOPTED by the governing body of the City and signed by the Mayor this 1<sup>st</sup> day of March, 2010.

(SEAL)

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Harold H. Jones, Jr, Mayor

ATTEST:

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Denise M. Powell, City Clerk

**POWER PURCHASE AGREEMENT  
(GRAND RIVER DAM AUTHORITY POWER SUPPLY)**

This Power Purchase Agreement (the "Agreement") is dated as of the 1<sup>st</sup> day of March, 2010 by and between the City of Washington, Kansas, (the "City") and the Kansas Municipal Energy Agency ("KMEA") (collectively, the City and KMEA are referred to as the "Parties" or singularly as the "Party").

**WHEREAS**, KMEA is a municipal energy corporation organized and existing under the laws of the State of Kansas, including K.S.A. 12-885 *et seq.*; and

**WHEREAS**, the City owns or operates a utility furnishing electricity, and the City is a member in good standing of KMEA; and

**WHEREAS**, the City is authorized to enter into contracts for the supply of electricity from any person, firm, corporation or other municipality for a period not in excess of forty (40) years under K.S.A. 12-825j; and

**WHEREAS**, the City desires to purchase electricity from KMEA in the quantities set forth on *Appendix B* hereto, subject to the terms of this Agreement; and

**WHEREAS**, KMEA has contracted with the Grand River Dam Authority ("GRDA") under a Power Purchase and Sale Agreement (the "GRDA Agreement") attached hereto as *Appendix A*; and

**WHEREAS**, KMEA will use commercially reasonable efforts to develop and maintain firm transmission service arrangements with third parties for delivery of the electric power and energy to the City's Delivery Point in sufficient amounts to comply with the contractual requirements set forth herein on or before the earlier of June 1, 2011 or the Service Commencement Date;

**NOW, THEREFORE, THE CITY OF WASHINGTON, KANSAS AND THE KANSAS MUNICIPAL ENERGY AGENCY, AGREE AS FOLLOWS:**

**Article 1. DEFINITIONS**

Capitalized words and terms used herein, unless otherwise defined herein or the context requires otherwise, shall have the same meanings ascribed to such words and terms in the GRDA Agreement. Words, phrases or expressions used in this Agreement which are not capitalized terms or otherwise defined herein, and which have an accepted meaning in the custom and usage of the business of buying, selling, generating, delivering, and transmitting electrical capacity, energy or ancillary services or have an accepted meaning according to the North American Electric Reliability Council, hereinafter referred to as NERC, shall have that meaning.

- 1.01 "Point(s) of Delivery" shall mean any point at which GRDA delivers electric power and energy at the high side of the generation bus.
- 1.02 "Service Commencement Date" shall be on or after 12:00 a.m. CPT on the first day of the calendar month in which SPP has granted firm transmission arrangements to KMEA for the delivery of the electric power and energy purchased hereunder from the Point(s) of Delivery to KMEA's Loads in sufficient amounts to comply with any portion of the contractual

requirements set forth herein, or such other date agreed to by the Parties in writing, subject to the prior written agreement from GRDA.

- 1.03 “*Term*” shall mean the period of time commencing on the Service Commencement Date and ending on the Termination Date.
- 1.04 “*Termination Date*” shall mean April 30, 2026, or such other date as the Parties may agree in writing, unless terminated earlier in accordance with Article 13 of the GRDA Agreement.
- 1.05 “*Electricity*” shall include all capacity and energy, transmission and all other services relating to the delivery of electrical power into the City's municipal utility system.

## **Article 2. CONSTRUCTION**

- 2.01 **Interpretation.** Unless the context otherwise requires:
- (a) Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.
  - (b) Any reference in this Agreement to any entity or governmental authority, shall include its successors and assigns and, any entity(ies) succeeding to its functions, authority, and capacities.
  - (c) Any reference in this Agreement to any section, subsection, attachment, article, schedule, appendix or exhibit means and refers to the section or article contained in, or attachment, schedule, appendix or exhibit attached to, this Agreement. All attachments, schedules, appendices and exhibits referred to herein are hereby incorporated by reference.
  - (d) A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed unless the text indicates otherwise.
  - (e) A reference to a document or agreement, including this Agreement, includes a reference to that document or agreement (including any attachments, schedules, appendices and exhibits thereto) as notated, amended, supplemented, or restated from time to time.
  - (f) Unless otherwise expressly provided herein, any consent, acceptance, satisfaction, cooperation, or approval required of a Party under this Agreement shall not be unreasonably withheld or delayed.
  - (g) Unless otherwise expressly provided herein, “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term.
  - (h) The words “hereof,” “herein,” “hereunder,” and other words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.
- 2.02 **Construction of Terms.** The Parties to this Agreement acknowledge that each Party has participated in the drafting of this Agreement and agree that this Agreement shall not be interpreted against one Party or the other based upon who drafted it.

- 2.03 **Captions.** All indices, titles, subject headings, section titles, and similar items in this Agreement are provided for the purpose of reference and convenience only and are not intended to be inclusive or definitive or to affect the meaning of the contents or scope of this Agreement.

### Article 3. SALE AND PURCHASE

- 3.01 KMEA agrees to sell to the City, and the City agrees to purchase from KMEA, commencing on the Service Commencement Date and extending through the Term hereof, Electricity, including Firm Capacity and associated energy in the quantities set forth on **Appendix B** to this Agreement, at the prices specified in **Exhibit A** to the GRDA Agreement for Capacity Billing Demand and Billing Energy as set forth therein and as may be amended by GRDA during the Term of the GRDA Agreement. KMEA's obligation to commence service hereunder is subject to KMEA receiving a duly executed agreement providing firm transmission service arrangements sufficient for delivery of the electric power and energy provided pursuant to this Agreement.
- 3.02 The monthly Capacity Billing Demand and monthly Billing Energy quantities shall, during the Term of this Agreement, be the amounts set forth in **Appendix B** to this Agreement.
- 3.03 The City agrees to receive all of the electric power and energy, which it is obligated to purchase under this Agreement, at the Point(s) of Delivery. The City agree to assume all liability whatsoever resulting directly, or indirectly, from the use, misuse, or presence of said electric power and energy from and after the Point(s) of Delivery. The City further agrees to assume its proportionate share of the obligations of KMEA to GRDA under the GRDA Agreement, attached hereto as **Appendix A** and incorporated herein by reference, all as may be amended from time to time.

### Article 4. PAYMENTS AND BILLING

- 4.01 (a) Each month the City will pay KMEA the City's allocated portion of all amounts to be paid for the Electricity delivered under this Agreement, including, without limitation:
- Basic Charge<sup>1</sup>
  - Capacity Charge, per Capacity Billing kW<sup>1</sup>
  - Energy Charge, per Billing kWh<sup>1,2</sup>
  - Taxes, Fees and Duties
  - Costs associated with providing financial surety to transmission providers, including interest on advanced funds
  - Administrative Fee as described in Section 4.02 herein
  - Transmission Fees as described in Article 5 herein
- (b) The City acknowledges that the rates are subject to change by GRDA from time to time pursuant to 82 O.S.A. Section 861 *et seq.*, and the City will pay KMEA the rates as established by GRDA under the GRDA Agreement and Schedule WP-OCA. KMEA agrees to promptly communicate to the City any notice from GRDA on Schedule WP-OCA changes.

(c) The payments made by the City to KMEA under this Agreement shall be paid from the gross revenues (the "Revenues") of the City's electric utility system or other integrated utility system of the City of which the City's electric utility system may be a part (the "System"). The payments by the City for Electricity under this Agreement shall constitute operating expenses of the System. Such payments shall be in addition to, and not in substitution for, any other payments, whether on account of dues or otherwise, owed by the City to KMEA. The obligation of the City to make payments to KMEA under this Agreement, whether or not reduced to judgment, shall not constitute general obligations of the City, and the City shall not be required to make such payments from any source other than the Revenues.

(d) The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Revenues sufficient to (a) pay all operating expenses of the System, including the obligation to make payments under this Agreement, as amended; (b) pay the principal of and interest on all the bonds and any other indebtedness of the System (the "System Indebtedness") as and when the same become due; and (c) provide reasonable and adequate reserves to satisfy covenants in the resolutions authorizing System Indebtedness and for the general protection and benefit of the System.

(e) The obligation of the City to make payments under this Agreement shall be absolute, and the failure of KMEA to deliver Energy hereunder shall not relieve the City from its obligation to pay for the City's proportionate share of the expenses incurred by KMEA for the Electricity.

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<sup>1</sup> For current rates see **Schedule WP-OCA – Wholesale Power Service Outside Control Area** contained in *Exhibit A* to the GRDA Agreement.

<sup>2</sup> This rate is subject to the Power Cost Adjustment set forth on Schedule PCA.

4.02 The City agrees to pay KMEA for approved budget amounts relating to the GRDA Power Supply Project. KMEA budgets are approved annually by KMEA's Board of Directors.

ESTIMATED KMEA CHARGE: 1 Mill per kWh

4.03 KMEA is required to pay GRDA either by mail or wire transfer by the due date shown on the bill from GRDA. A late payment fee of the greater of \$100.00 or 1.5% of the total past due amount shall be applied to the total past due amount. In order to permit the appropriate transfer of funds from KMEA to GRDA, KMEA will bill the City in advance for deliveries to be made in the following calendar month. KMEA will send the bill to the City by the 20<sup>th</sup> day of the preceding month, and the City must pay the invoiced amount within thirty (30) days of the date of the bill. If such due date falls on a Saturday, Sunday or holiday, the payment shall be due on the next business day following such Saturday, Sunday or holiday. If payment is not received by KMEA by the date specified in the invoice to the City, a **1% per month (annual**

**percentage rate of 12%), late charge** shall be assessed on the full past due amount from the due date until the invoice is paid in full by the City.

- 4.04 In the event the City, acting in good faith, disagrees with the amount of a monthly bill, it shall notify KMEA in writing within eighty (80) days of receiving the bill from KMEA. If the dispute involves amounts billed by GRDA, KMEA will submit a written notice to GRDA contesting such portion of the monthly bill. KMEA is required to submit such written notices to GRDA within ninety (90) days of the date KMEA received the bill from GRDA. Failure of the City to send written notice to KMEA within the eighty-(80) day period shall constitute final agreement with the bill. The City agrees that in no event will it withhold payment to satisfy its disagreement with any bill submitted by KMEA. KMEA shall credit to the City its prorata portion of any refund plus accrued interest which is credited to KMEA's account by GRDA.

#### **Article 5. TRANSMISSION**

- 5.01 KMEA will use commercially reasonable efforts to develop and maintain firm transmission service arrangements with third parties for delivery of the electric power and energy to the City's delivery points in sufficient amounts to comply with the contractual requirements set forth in *Appendix B* to this Agreement. In the event such arrangements are not completed on or before the Service Commencement Date, the quantities set forth in Appendix B to this Agreement will be modified to provide the quantity for which firm transmission service arrangements have been granted.
- 5.02 The City will pay KMEA all the cost of the transmission services from and after the Point(s) of Delivery to the City's designated points. The City acknowledges that the charges for transmission services are subject to change by SPP or its successor, and the City will pay KMEA the rates as established by SPP, or its successor, as in effect from time to time.
- 5.03 Both parties acknowledge that the SPP is the current regional transmission organization and that during the term of this agreement, another organization may succeed the SPP. Due to the changing nature of the wholesale power market rules and regulations, any successor organization protocols and operating procedures shall, to the extent practical, be adopted for use by this Agreement.

#### **Article 6. INDEMNIFICATION OF KMEA**

- 6.01 The City agrees to take full responsibility for and to hold KMEA harmless from any charges related to the provision of any purchase of power or energy or the transmission thereof, for which KMEA has contracted for with GRDA.
- 6.02 The City assumes responsibility at the Point(s) of Delivery for the electric service to be delivered by GRDA as well as for the wires, apparatus and appurtenances used in connection therewith, located on its own side of the Point(s) of Delivery, and the parties acknowledge that the electric service supplied under the GRDA Agreement through this Agreement will become the property of the City after it passes the metering equipment of GRDA or other Point(s) of Delivery.
- 6.03 Neither KMEA nor the City shall be liable to the other for any special, indirect, and consequential or punitive damages, including loss of power, loss of product, or loss of revenue, howsoever caused.

**Article 7. FORCE MAJEURE AND CURTAILMENTS**

- 7.01 GRDA has committed to provide electric service continuously except for (a) interruptions due to Force Majeure, (b) in the event conditions occur which threaten the reliability to the Southwest Power Pool (SPP) Transmission System or the GRDA transmission system, or (c) curtailments by SPP or (d) GRDA curtailments under emergency procedures specified by SPP or NERC criteria. As soon as commercially reasonable, GRDA will give KMEA notice of such interruptions or reductions so as to cause the least amount of inconvenience to both Parties hereto, and KMEA will provide notice to the City. In case of impaired or defective service, the City shall immediately give notice by telephone to KMEA's system dispatcher. Such interruptions in service shall not constitute a breach of the Agreement by KMEA, and KMEA shall not be liable to the City for any loss or damage arising from failure, interruption or suspension of service. The obligation of the City to make payments are not subject to delay or excuse by reason of Force Majeure or any other cause or event.
- 7.02 If, and whenever, the delivery of Firm Capacity and associated energy thereunder shall be interrupted for a period exceeding one (1) hour in duration, due to a fault of the facilities of GRDA, a Force Majeure, or a curtailment by SPP, the monthly charge for Capacity Billing Demand for the month in which such interruption occurs shall be reduced in the ratio that the number of hours of such interruption bears to the total number of hours in such month. The City shall make written claim for a credit of such monthly charge for Capacity Billing Demand, within eighty (80) days after receiving the monthly bill for the month in which the interruption or interruptions occurred, for reduction of the amount due because of any such interruptions not reflected in such bill. Failure to make such written claim within said eighty (80) day period shall constitute a waiver thereof. Any credit of such monthly charge for Capacity Billing Demand shall not eliminate the requirement to pay for other components of the costs of the Electricity.
- 7.03 In case of impaired or defective service, the City shall immediately give notice by telephone to KMEA and the City will confirm such oral notice in writing within twenty-two (22) hours of such notice given by telephone.

**Article 8. SUSPENSION OF SERVICE FOR NONPAYMENT**

- 8.01 Whenever KMEA has failed to pay any monthly bill accruing under this Agreement on or before forty (40) days following the first day of the calendar month in which such monthly bill was received, GRDA may suspend providing electric power and energy upon giving written notice to KMEA of GRDA's intention to do so, and GRDA shall not be liable to KMEA for any damages whether regular, special, punitive, consequential or otherwise for its discontinuance of delivery of such electric power and energy.

- 8.02 If the City, *or any other City who purchases electric power supplied by GRDA to KMEA under the Contract*, fails to pay KMEA within the time specified above, KMEA will be unable to pay GRDA in full. If GRDA discontinues electric service, in whole or in part, the electric service to all the Cities may be suspended. KMEA SHALL NOT BE LIABLE TO ANY CITY FOR DAMAGES, WHETHER REGULAR, SPECIAL, PUNITIVE, CONSEQUENTIAL OR OTHERWISE, FOR ANY SUSPENSION OF SERVICE.

**Article 9. RESALE RESTRICTIONS ON PRIVATE BUSINESS USE**

- 9.01 The City represents and warrants to KMEA that it will not sell in excess of seven percent (7%) of any capacity or energy sold by KMEA to the City under this Agreement in any manner that would cause such sale to result in any facility of GRDA being deemed to be used for a private business use under the Internal Revenue Code of 1986 and the regulations promulgated thereunder. To that end, the City covenants not to make any resale in excess of seven percent (7%) of capacity or energy sold by KMEA to the City under this Agreement to a purchaser for use or resale by such purchaser, if it would obligate a purchaser to make payments that are not contingent on the output requirements of the purchaser (including but not limited to minimum demand charges) or obligate the purchaser to have output requirement resales that require the purchaser to pay reasonable and customary damages (including liquidated damages) in the event of a default, or to pay a specified amount to terminate the contract or arrangement with the City while the purchaser has requirements, in each case if the amount of the payment is reasonably related to the purchaser's obligations to buy requirements that is discharged by the payment.
- 9.02 The City shall confirm to GRDA at least annually by December 1 that no resales have been made of the capacity and energy sold by KMEA to the City under this Agreement other than in compliance with *Section 9.01*. Nothing contained in *Section 9.01* shall affect the ability of the City to make resales to any persons under any conditions if and to the extent such resales are made from resources other than the capacity or energy sold to the City by KMEA under this Agreement.

**Article 10. BREACH OF GRDA AGREEMENT AND REMEDIES**

- 10.01 The City acknowledges that each of the following constitutes a breach of the GRDA Agreement:
- (a) the failure of KMEA to pay any amount that is past due if such failure is not remedied within three (3) business days after receiving written notice from GRDA;
  - (b) the failure of KMEA or GRDA to comply with any material term or condition of the GRDA Agreement which is not corrected within a commercially reasonable period of time;
  - (c) the failure of KMEA to provide the documentation as to creditworthiness of KMEA, as described in Section 7.05 of the GRDA Agreement, and the failure of KMEA to provide documentation as to compliance with the provisions of Section 15.07 of the GRDA Agreement relating to resales of energy and capacity that constitute private business use;

- (d) the filing by KMEA or GRDA of a voluntary petition in bankruptcy under any provision of any federal or state law; or
  - (e) the entry of a decree adjudicating KMEA or GRDA bankrupt or insolvent, if such decree is continued undischarged and unstayed for a period of sixty (60) days.
- 10.02 Upon any breach by one party, the non-breaching party under the GRDA Agreement may, at its option:
- (a) continue performance and exercise such other rights and remedies as it may have in equity, at law or under the terms of the GRDA Agreement; or
  - (b) terminate the GRDA Agreement by providing ten (10) days advance written notice to the breaching party. Termination of the GRDA Agreement shall not relieve either party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective. The non-breaching party may also exercise such other rights and remedies as it may have in equity, at law or under the terms of the GRDA Agreement.
- 10.03 In the event of a breach of the GRDA Agreement, the exercise of any remedy will correspondingly apply to this Agreement between KMEA and the City. In no event will KMEA be liable to the City under this Agreement, or under any cause of action relating to the subject matter of this Agreement, for any special, indirect, incidental, punitive, exemplary or consequential damages, including but not limited to loss of profits or revenues, loss of use of any property, cost of substitute equipment, facilities, or services, downtime costs or claims of third parties for such damages. This provision shall survive termination of this Agreement.

#### **Article 11. MISCELLANEOUS**

- 11.01 This Agreement shall be binding upon and inure to the benefit of the successor, legal representative, and assignees of the respective Parties; provided, however, except for the assignment by KMEA as provided in this subsection, neither this Agreement, nor any interest herein shall be transferred or assigned by either party hereto except with the prior written consent of the other Party, which consent shall not be unreasonably withheld. The City acknowledges and agrees that KMEA may assign and pledge all of, or any interest in, KMEA's right, title and interest in and to all payments to be made to KMEA under the provisions of this Agreement, as security for the payment of any obligation of KMEA, including interest thereon, created under any power purchase contract, reimbursement agreement, loan, bond or other instrument (collectively, "Contract Obligations"). In connection with such assignment and pledge, KMEA may deliver possession of this Agreement to such assignee and pledgee and grant such assignee and pledgee any rights and remedies herein provided to KMEA, and such assignee and pledgee shall be a third party beneficiary of the covenants and agreements of the City herein contained; provided, however, that nothing herein is intended to allow KMEA in the absence of an event of default under any Contract Obligations, to convey its operating responsibilities to any such assignee and pledgee.
- 11.02 This Agreement shall in all respects be subject to the rules, regulations and orders of all governmental authorities having jurisdiction of the subject matter hereof, and subject to the rules and regulations as may be applied to the Parties by such governmental authorities.

- 11.03 This Agreement may be amended from time to time by mutual agreement of KMEA and the City; provided, however, that any such amendment must have the approval, in writing, of the governing boards of each of the Parties.
- 11.04 This Agreement, together with the Appendices attached hereto and made a part hereof, constitutes the entire agreement between KMEA and the City regarding the subject matter hereof, and supersedes any and all previous or contemporaneous understandings between KMEA and the City, whether written or oral.
- 11.05 To the extent any provision of this Agreement is held unenforceable or invalid under applicable law, such invalidity shall not affect any other provisions of this Agreement which can be given effect without the invalid provisions and, to this end, the provisions hereof are severable.

**IN WITNESS HEREOF**, the Parties hereto have executed this Power Purchase Agreement on the date set forth above.

(SEAL)

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Harold H. Jones, Jr, Mayor

ATTEST:

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Denise M. Powell, City Clerk

KANSAS MUNICIPAL ENERGY AGENCY

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James R. Widener  
General Manager

## Appendix B

### Capacity Billing Demand and Billing Energy

The Capacity Billing Demand and Billing Energy for each month of the Term shall be as follows.

The Capacity Billing Demand and Billing Energy for the months of June through September for the Term shall be the Nominal Capacity Billing Demand as follows.

Month	Nominal Capacity Billing Demand (kW)	Minimum Capacity Billing Demand (kW)	Maximum Capacity Billing Demand (kW)	Billing Energy (kWh)
June	500	500	500	360,000
July	500	500	500	372,000
August	500	500	500	372,000
September	500	500	500	360,000

**Appendix B (continued)**

**Capacity Billing Demand and Billing Energy**

The Capacity Billing Demand and Billing Energy for the months of October through May for the Term shall be the Nominal Capacity Billing Demand as follows, unless the City notifies KMEA at least three (3) Business Days prior to the first day of the month preceding the month of delivery of a revised Nominal Capacity Billing Demand, which will not be less than the Minimum Capacity Billing Demand nor greater than the Maximum Capacity Billing Demand. The Billing Energy for any such revised month will be calculated to be the revised monthly capacity billing demand for the month scheduled at a 100% monthly load factor.

Month	Nominal Capacity Billing Demand (kW)	Minimum Capacity Billing Demand (kW)	Maximum Capacity Billing Demand (kW)	Billing Energy (kWh)
October	375	375	500	279,000
November	375	375	500	270,000
December	375	375	500	279,000
January	375	375	500	279,000
February	375	375	500	252,000
March	375	375	500	279,000
April	375	375	500	270,000
May	375	375	500	279,000

Notes:

1. The Billing Energy is calculated by multiplying the Capacity Billing Demand times the number of hours in the applicable month (a 100% monthly load factor).
2. The number of hours in a month will reflect both the change from daylight savings time to standard time and the change from standard time to daylight savings time during the applicable months as defined by federal law.
3. For leap years, the number of hours in February is 696.