

Oberlin City Council meeting
5:00 pm
April 4, 2019



AGENDA
CITY COUNCIL MEETING
Gateway 1 & 2 – Oberlin, Kansas
April 4, 2019
5:00 PM

Meeting Called to Order – Mayor Ladd Wendelin

ROLL CALL of the Members of the City Council and determination of quorum.
Oien____ Marchello _____ Lohofener____ Gawith _____ McHugh _____

PLEDGE OF ALLEGIANCE to the Flag

BOARD APPOINTMENTS

PUBLIC COMMENT

CONSENT AGENDA: Discussion and possible action by motion to approve the following items and or reports:

- Approval of minutes of previous meetings
- Appropriation Ordinance (Payment of Bills)
Motion_____ Second_____

ADMINISTRATORS REPORT

1. Next Council Meeting April 18, 2019
2. MMA Update
3. Seasonal Help
4. Amendment #8 Update
5. Pratt Conference and Energy Study Update

NEW BUSINESS

1. KDOT Airport Grant Agreement – Height and Hazard Study
2. Resolution No. 711 Authorizing Execution of SWPA Project Agreement
3. KMEA Southwestern Power Administration (SPA) Extension Agreement
4. Right Of Way Access Permission for Groundwater Monitoring Wells
5. Pool Fees 2019

REPORTS OF OTHER OFFICERS, BOARDS AND COMMITTEES

- Mayors Report
- Public Works Department – Foreman Sporn Report 4-1-19
- Treasurers Report – Sales and Use Tax Report
- Police Report
- Board Reports – Library Minutes Mar 2019
- Other Reports – Gateway Calendar

ADJOURNMENT

- Action – Motion to Adjourn
Motion_____ Second_____

REGULAR COUNCIL MEETING –March 21, 2019 - GATEWAY- 5:00 p.m.

CALL TO ORDER – Acting Mayor Brandon Oien called the meeting to order at 5:15 pm and the Pledge of Allegiance to the Flag was recited.

Roll Call of the Members of the City Council – Brandon Oien, Kristin McHugh and Deb Lohofener by phone. Majority of the Body Present.

Absent: Mayor Ladd Wendelin, Scott Gawith and Jim Marchello

Others Present: City Attorney Steve Hirsch, City Administrator Halley Roberson, City Foreman David Sporn, Steve Zodrow, Jeremy Tally, Dana Mannebach with the Oberlin Herald, Brice Meitl, Marilyn Black, Troy Haas, Heather McDougal, Brian Shaw, Erica Fortin, Deanna Castle, Lindsay Fortin, Valisha Raile, Chris Miller with Miller & Associates and City Clerk Sandy Rush.

BOARD APPOINTMENTS

McHugh moved, second by Oien, to approve the reappointment of Ardith Louderback to Housing Authority for a three year term ending in April 2022. **Motion carried.**

PUBLIC COMMENT

Brian Shaw with the Strategic Doing Recreation Committee talked to the council about their goals for Oberlin.

1. He said instead of looking for grounds to build new baseball fields, they would like permission to apply for a grant to fund engineering to analyze and design expansions to the current ball fields. The committee would like to be able to accommodate tournaments by updating the two baseball fields to the required dimensions, renovating the storage building and the bathrooms.
2. Mr. Shaw explained the committee would like to implement a recreation director to coordinate and implement the information, tournaments, facilities needed and website. Funding options were discussed between the city, county and school.

Acting Mayor Oien concluded the committee had the council's blessing to apply for a grant. Administrator Roberson will create a letter of approval for the committee.

CONSENT AGENDA

Approval of minutes – for February 21, 2019 regular Council meeting.

Appropriation Ordinance - Payment of Bills.

McHugh moved, second by Oien, to approve the Consent Agenda. **Motion carried.**

ADMINISTRATORS REPORT

1. Next Council Meeting will be April 4th.
2. This weekend will be the Mixed Martial Arts Event at the Gateway.
3. Overall Street conditions have not been fully assessed yet due to the rain. The road south of town leading to the wells will need to be worked on and money from the streets may need to be diverted to address this serious road problem.
4. Seasonal Help is needed sooner and longer to help with the parks and will be advertised.

NEW BUSINESS

Amendment #8 to Lagoon Loan Agreement – Chris Miller with Miller & Associates spoke to the council about the proposed #8 Amendment to the Loan Agreement for the Kansas Water Pollution Control Revolving Fund loan to the City for the wastewater treatment improvements project. The amendment revises the final actual amount of the loan and the principal forgiveness to be adjusted based on the final actual cost of additional improvements. The revised semiannual repayment amount is not changed at this time but remains \$49,078.99 (\$98,157.98 per year). Treasurer Zodrow informed the council the project was supposed to be at no cost to the City. Instead the city is being assessed interest and service fees because it is taking KDHE 30 days from the time they make the loan

advance to book the loan principal forgiveness. If they were booking both entries on the same day, the interest and service fees would not exist. It is an internal issue with KDHE's process according to Zodrow. Miller recommends approving and signing the amendment contingent upon a phone conference call with KDHE, Zodrow, Roberson and Miller for a better explanation of the interest. McHugh moved, second by Oien to approve. **Motion carried.**

Application #3 BSB Construction \$9,622.74 for Lagoon Project – McHugh moved, second by Oien to approve application #3 from BSB Construction for Wastewater Treatment Facility Improvements. **Motion carried.**

REPORTS OF OTHER OFFICERS, BOARDS AND COMMITTEES

- Public Works Department – Foreman Sporn 3-19-19 Report
 1. Request permission for City wide curb pickup to be April 29, 2019.
 2. Water meters were read for the winter months.
- Treasurers Report – Treasurer Steve Zodrow
 1. Year End Cash Flow and Published Summary Statement
 2. Feb 2019 Sales and Use Tax History Report
- Police Report – Chief Burmaster Feb 2019 Police Report
- Board Reports –
 1. CVB Jan 2019 Minutes and Feb 2019 Agenda
 2. EDC Jan 2019 Minutes and Feb 2019, Mar 2019 Agenda
 3. Chamber Feb 2019 Minutes and Mar 2019 Agenda

#1 Acting Mayor Oien called for a 5-minute Executive Session to discuss Attorney/Client privilege to include mayor, administrator, city attorney and council starting at 5:55 p.m. Oien moved, second McHugh. **Motion carried.** Resumed at 6:00 p.m.

Oien moved, second by McHugh to extend the Executive Session to include the same and city foreman for 5-minutes. **Motion carried.** Resumed at 6:05 p.m. with no action taken.

#2 Acting Mayor Oien called for a 3-minute Executive Session to discuss Attorney/Client privilege to include mayor, administrator, city attorney, council and city foreman starting at 6:10 p.m. Oien moved, second by McHugh. **Motion carried.** Resumed at 6:13 p.m. with no action taken.

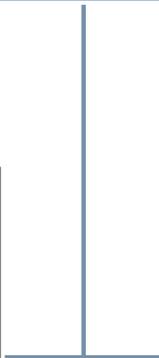
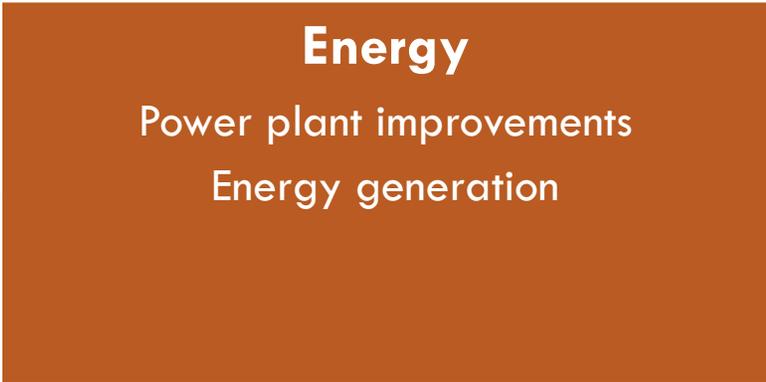
Adjourn – At 6:20 pm McHugh moved, second by Oien to adjourn. **Motion carried.**

ity Council meeting

2019



Energy efficiency projects



Why consider alternative energy?



- Increased revenue for Oberlin
 - Avoid rate increases – especially important with the hospital and school conducting an energy audit so these government entities can enjoy savings
 - Avoid tax increase – equipment and material costs do not seem to be decreasing – how do we keep up with these demands?

Why consider alternative energy?



- Increased revenue for Oberlin
 - Allot funds for infrastructure projects
 - Additional funds to purchase materials
 - Use additional revenue to cover operational costs

Why consider alternative energy?



- Stable energy prices
 - Able to 'shave' demand charges
 - Improving margin
 - Improved the possibility for more accurate cost projections for electricity
 - Consistent pricing/charges

Why consider alternative energy?



- Innovation
 - ▣ Making Oberlin more attractive for residences
 - ▣ Making Oberlin more attractive for business
- Education and job creation
 - ▣ Using local labor for construction
 - ▣ Local labor for contract maintenance
 - ▣ Partnering with schools for experience with alternative energy for students

Things to get ready to hear



- PPA – this is a *Power Purchase Agreement*
- PPA is a contract between two parties:
 - ▣ 1 generates electricity
 - ▣ 1 purchases electricity
- PPA/ Power Purchase Agreement can be structured in various ways – Oberlin is already in a PPA with Sunflower Electric as our provider

Typical PPA structures for generation

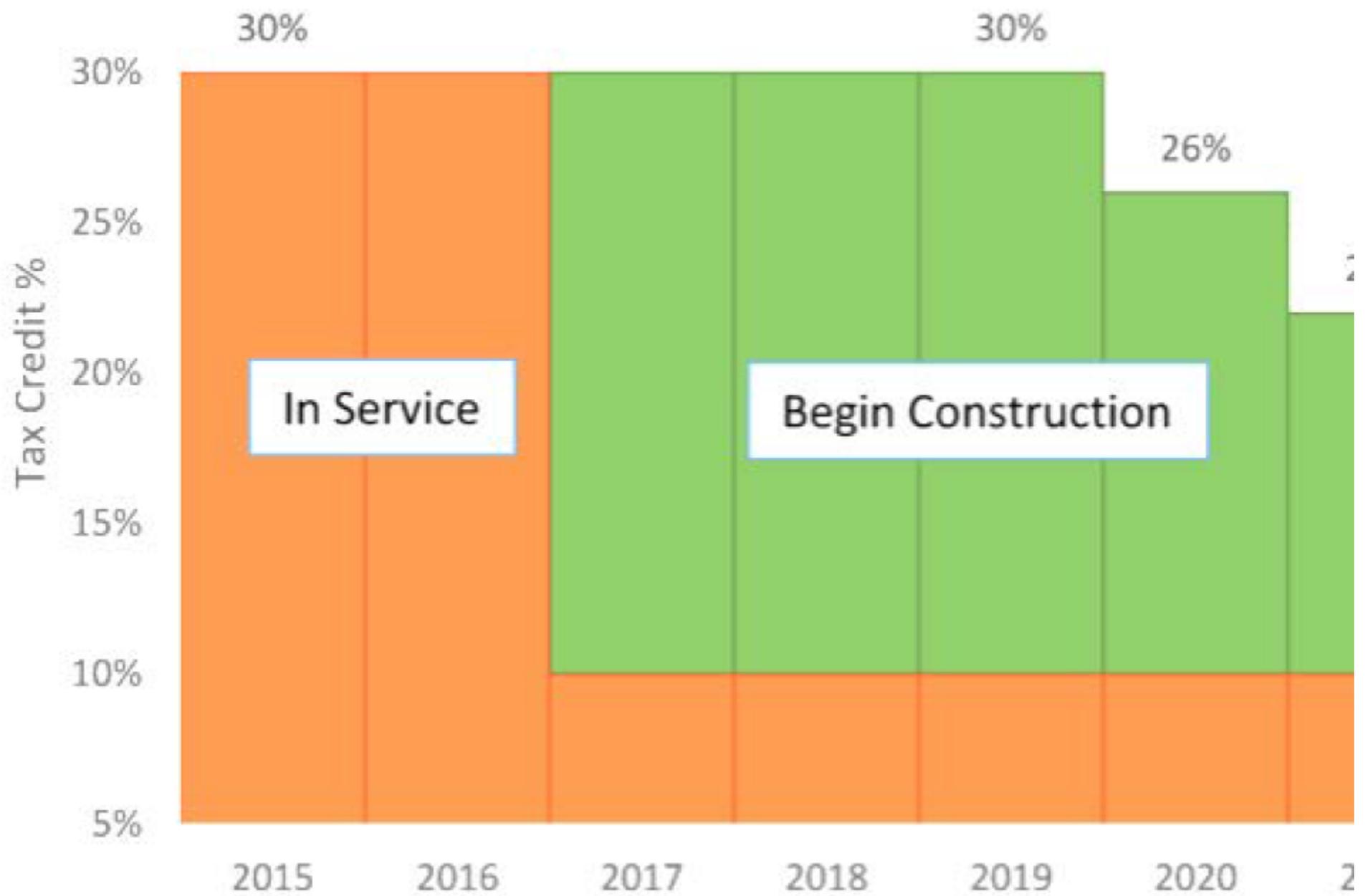
- Structured from 15 – 25 years
- Options for extension prior to purchase – if a PPA is originally written for 15 years but the time is not right to purchase extension periods are available, and ‘easy’ to execute.
- If purchase is not viable, no extensions are desired by Oberlin the alternative energy source(s) can be removed by the installing company (this would be approximately 15 years if that is the term set by the PPA)

Why would a company provide a PPA?



- Money
- How do they make money
 - ▣ Selling electricity
 - ▣ Tax incentives
 - ▣ Government incentives

Investment Tax Credit Reduced After 2019



PPA vs. Corporate purchasing

- Oberlin purchases power through a PPA with Sunflower Electric now – a PPA with alternative energy partners would be supplemental electric, we would still need a Sunflower or KMEA. The alternative PPA offers the ability to purchase with projected reduced costs (key) and options to own the electrical generation asset in the future.

Power purchasing	Same	Different
Agreed upon price	X	
Ability to own power generation assets		X
Stable electric pricing (demand, market flux)		X
Ability for more independence		X

Risks and risk mitigation

Risk	Risk mitigation
Legislation to continue incentives for investment partners (PPA)	Confident tax incentives will remain, if does not remain at 30% it is projected be 25%-30% range if project is started within specified timeframe grandfather occurs
What if this doesn't work	Investment partners (PPA) assume risk
How does solar integrate into Oberlin's line system	Pratt had the same question; power plant operator/journeyman said it was easy – same as power coming from the provider
What are we going to do with a solar field?	Managed maintained by PPA – all costs and staff belong to PPA – 15 years of prep time, great partnering opportunities with CCC.
Will we get caught 'holding the bag'	Win-win scenario – the relationship benefits both parties only when both parties succeed

Remaining questions



- How much will this cost?
- How much electricity can alternative PPA produce for Oberlin?
- What is the purchase of alternative PPA electric?
- What is the revenue increase for Oberlin, is the money for real?
- If we decide to do it, how long will it take?
- How much land will this take?
- What is this going look like – not in a metaphoric sense what does it really look like?
- Are we going to be trapped?

Power Plant

Concerns	Benefits
<ul style="list-style-type: none">•Regulations becoming more stringent especially with KDHE. How long will it be allowed to operate?•Old equipment – finding personnel who can actually operate the plant is a challenge – due to the difficulty of operation, no support, limited operational time makes training a very long process.	<ul style="list-style-type: none">•The 2017 blizzard demonstrated the power plants value. There would have been no power for a week, everything would have shut down. Everything!

Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745

Julie L. Lorenz, Acting Secretary
Robert W. Brock, Director



Phone: 785-296-2553
kdot#publicinfo@ks.gov
<http://www.ksdot.org>
Laura Kelly, Governor

March 18, 2019

Ms. Halley Roberson
Oberlin Municipal Airport
1 Morgan Drive
Oberlin, KS 67749

RE: KDOT Grant Offer – Project Number AV-2019-38

Dear: Ms. Roberson

Congratulations, you have been approved for FY 2019 Kansas Airport Improvement Program (KAIP) funding to support the project described in your KAIP application as conduct a height and hazard study.

To complete this process, I have attached the following documents for your action:

1. Grant Payee Information sheet (fill out)
2. Airport Project Agreement specific to your project (two copies, review and sign)

If the grant is acceptable, please return all the following items as soon as possible:

1. Completed Grant Payee Information sheet
2. Both copies of the agreement, bearing original signatures of the sponsor

I would like to call to your attention that Article IV, Paragraph 1 of the agreement requires you take action and return the signed agreements within 120 days of the date on this letter. This grant offer will expire on July 16, 2019.

An original copy of the signed agreement will be provided upon completion.

If you have questions or concerns, please don't hesitate to contact us directly at (785) 296-2553. We look forward to working with you to continue growing Kansas aviation.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Brock".

Robert W. Brock
Director

AIRPORT DESIGN AND PLANNING AGREEMENT

This Agreement is between the **Secretary of Transportation of the State of Kansas**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Oberlin, Kansas** (the “Airport”), collectively, the “Parties.”

RECITALS:

- A. The Airport has applied for and the Secretary has approved an Airport design and planning project to: conduct a height and hazard study for local airspace protection mechanisms for the Oberlin Municipal Airport.
- B. The Secretary has approved the use of Kansas Airport Improvement Program (KAIP) funds from the State’s General Aviation Airport Development Fund for this purpose, limited to the scope of the Project, as further described below.
- C. The Secretary and the Airport are empowered by the laws of Kansas to enter into agreements for the design and planning of the airport.
- D. The Secretary and the Airport desire to enter into this Agreement to participate in the cost of the Project by use of State funds.

NOW THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“Airport”** means the City of Oberlin, Kansas, with its place of business at 1 Morgan Drive, Kansas 67749.
- 3. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
- 4. **“Expiration Date”** means one hundred twenty (120) days after the date the Grant Offer Letter is mailed by the Secretary.
- 5. **“KAIP”** means the Kansas Airport Improvement Program, administered by KDOT’s Division of Aviation.

6. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
7. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, reasonably determines are not Participating Costs.
8. **“Participating Costs”** means expenditures for items or services which are an integral part of the Project, as reasonably determined by the Secretary.
9. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the Airport.
10. **“Project”** means all phases and aspects of the endeavor to be undertaken by the Airport, being as follows: **conduct a height and hazard study for local airspace protection mechanisms for the Oberlin Municipal Airport**, and is the subject of this Agreement.
11. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Payment of Costs.** In accordance with KAIP guidelines, the Secretary agrees to reimburse the Airport ninety-five percent (95%) of the total planning costs, but not to exceed \$38,000.00 for the Project. The Secretary shall not be responsible for the total actual Project planning costs that exceed \$40,000.00. The Secretary reserves the right to retain up to five percent (5%) of the Secretary’s maximum participation until the Airport completes its obligations under this Agreement to the satisfaction of the Secretary.
2. **Reimbursement Payments.** The Secretary agrees to make such payment to the Airport as soon as reasonably possible after the Project is completed and after receipt of proper billing and certification by the Airport that the Project was completed.
3. **Verification of Project Start** – The Secretary shall not reimburse the Airport until the Secretary receives verification from the Airport that the Project is underway. Verification for the Project may consist of evidence of construction, proof of hiring consultant or contractor for the Project, or other method deemed acceptable by the Secretary’s authorized representative. Failure to submit verification that the Project has been started within two (2) years of the effective date shall result in the Secretary cancelling the Project. Permission to delay the Project start must be approved by the Secretary and evidenced by a supplemental agreement executed by both Parties.

ARTICLE III

AIRPORT RESPONSIBILITIES:

1. **Project Administration.** The Airport agrees to undertake the Project, which entails an airport planning study that produces a tangible document that assists the airport in the consideration of factors typically examined in an airport layout plan.

2. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the Airport will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the Airport, the Airport's employees, agents, subcontractors or its consultants. The Airport shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

3. **Financial Obligation.** In accordance with KAIP guidelines, the Airport will be responsible for five percent (5%) of the total actual planning costs, up to \$40,000.00, which is the estimated total actual planning costs for the Project. The Airport agrees to be responsible for one hundred percent (100%) of the total actual planning costs that exceed \$40,000.00 for the Project. The Airport agrees the total estimated local share costs associated with the Project is \$2,000.00. The Airport shall also pay for any Non-Participating Costs incurred for the Project.

4. **Audit.** The Airport will participate and cooperate with the Secretary in an annual audit of the Project. The Airport shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments that have been made with state funds by the Airport for items considered Non-Participating Costs, the Airport shall promptly reimburse the Secretary for such items upon notification by the Secretary.

5. **Accounting.** Upon request by the Secretary, the Airport will provide the Secretary an accounting of all actual Non-Participating Costs associated with the Project which are paid directly by the Airport to any party outside of the Secretary and costs incurred by the Airport not to be reimbursed by the Secretary. This will enable the Secretary to report all costs of the Project to the legislature.

6. **Legal Authority.** The Airport shall adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

7. **Assurance Clause.** At any time that the public is not allowed access to the airport, the Airport agrees to reimburse the Secretary a prorated amount based on a ten (10) year useful life of the Project. This assurance clause will be valid and enforceable for ten (10) years from the

date that the final payment is authorized. This provision is only applicable to closure for non-airport purposes.

ARTICLE IV

GENERAL PROVISIONS:

1. **Offer Expiration.** The Secretary's offer to fund the Project, subject to the terms of this Agreement, is contingent upon the Airport executing this Agreement on or before the Expiration Date. In the event the Airport fails to execute this Agreement on or before the Expiration Date, the Secretary will not be obligated to fund the Project and the Secretary may cancel the Project. If the Airport wishes to extend the Expiration Date, the Airport must submit a written extension request to the Secretary at least forty five (45) days prior to the Expiration Date. After receiving the request, the Secretary may extend the Expiration Date by providing written notice to the Airport.

2. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

3. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this Agreement and made a part hereof.

4. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

5. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the Airport and their successors in office.

6. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

The signature page immediately follows this paragraph.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

AIRPORT

By: _____
Name: _____
Title: _____

By: _____ (Date)
Kansas Department of Transportation
Julie L. Lorenz,
Acting Secretary of Transportation

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State will terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF OBERLIN, KANSAS
AUTHORIZING THE EXECUTION OF THE SWPA PROJECT
AGREEMENT BETWEEN THE CITY AND THE KANSAS MUNICIPAL
ENERGY AGENCY; AND AUTHORIZING ANY OTHER ACTIONS OF
THE CITY RELATED THERETO.**

WHEREAS, the Kansas Municipal Energy Agency ("KMEA") consists of members (the "Members") which are (i) cities organized and existing under the laws of the State, and (ii) authorized by such laws to engage in the local distribution and sale of electric power and energy; and

WHEREAS, KMEA is authorized by K.S.A. 12-885 *et seq.*, as amended, to plan, finance and construct projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate economical and reliable supply of electricity and other energy for its Members; and

WHEREAS, the City of Oberlin, Kansas (the "City") owns and operates a municipal electric system and is a Member in good standing of KMEA; and

WHEREAS, K.S.A. 12-825j authorizes the City to contract to buy from KMEA for the purchase of capacity and energy and related products to meet City's present and future requirements for a period not in excess of forty (40) years; and

WHEREAS, City has received allocations of Federal hydroelectric power and associated energy pursuant to the terms and conditions of the Southwestern Power Administration Final Power Allocations (1980-1988) 45 F.R. 19032 (1980); and

WHEREAS, KMEA intends to enter into a power sales contract to acquire hydroelectric power and energy from the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration ("SWPA") for a period of fifteen (15) years commencing on June 1, 2019 (the "KMEA-SWPA PSC"), whereunder KMEA will purchase, on a combined basis and on behalf of certain cities in the State of Kansas, including the City (collectively, the "Participants"), the Participants' allocations of hydroelectric power and energy from reservoir projects, constructed and operated by the U.S. Corps of Engineers, as such power and energy become available; and

WHEREAS, the SWPA Project Agreement (the "Project Agreement") is intended to enable KMEA to pass through a share of the benefits and obligations of the KMEA-SWPA PSC to City, such that neither KMEA nor City obtains a benefit or incurs a burden or obligation due to a drafting or other difference between the Project Agreement and the KMEA-SWPA PSC; and

WHEREAS, City desires to utilize its allocation of federal hydroelectric power from SWPA by participating in the SWPA Project, pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, be it resolved by the governing body of the City of Oberlin, Kansas, as follows:

Section 1. Approval of Project Agreement. The City hereby finds and determines it to be advisable and in the best interests of the City and its inhabitants to enter into the Project Agreement with KMEA regarding the City's allocation of federal hydroelectric power and associated energy from SWPA.

Section 2. Execution of Documents. The Mayor and the City Clerk are hereby authorized and directed to execute and affix the seal of the City to the Project Agreement with KMEA in substantially the form presented with this Resolution and to execute any other ancillary documents related thereto for and on behalf of, and as the act and deed of, the City.

Section 3. Further Authority. The officials, officers, agents and employees of the City are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Resolution and to carry out and perform the duties of the Issuer with respect to the Project Agreement.

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

ADOPTED by governing body of the City of Oberlin, Kansas, and signed by the Mayor this ____ day of _____, 2019.

City of Oberlin, Kansas

Mayor

(Seal)

Attest:

City Clerk

SWPA Project Agreement

between

Kansas Municipal Energy Agency

and

City of Oberlin, Kansas

This SWPA Project Agreement (“Agreement”) is made this ___ day of _____, 2019, by and between Kansas Municipal Energy Agency, a municipal energy agency organized and existing under the laws of the State, including particularly the Act (hereinafter “KMEA”) and City of Oberlin, Kansas, a municipal corporation organized and existing under the laws of the State (hereinafter “City”), (KMEA and City hereinafter referred to collectively as “Parties” or, at times, individually as “Party”).

WITNESSETH:

WHEREAS, KMEA consists of members (the “Members”) which are (i) cities organized and existing under the laws of the State, and (ii) authorized by such laws to engage in the local distribution and sale of electric power and energy; and

WHEREAS, KMEA is authorized by the Act to plan, finance and construct projects for the purchase, sale, generation and transmission of electricity for the purpose of securing an adequate economical and reliable supply of electricity and other energy for its Members; and

WHEREAS, City owns and operates a municipal electric system and is a Member in good standing of KMEA; and

WHEREAS, City is authorized under the laws of the State, including particularly K.S.A. 12-825j and the Act, to contract to buy from KMEA capacity and energy and related products to meet City’s present and future requirements for a period not in excess of forty (40) years; and

WHEREAS, City has received allocations of Federal hydroelectric power and associated energy pursuant to the terms and conditions of the Southwestern Power Administration Final Power Allocations (1980-1988) 45 F.R. 19032 (1980); and

WHEREAS, KMEA intends to enter into a power sales contract to acquire hydroelectric power and energy from the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration (“SWPA”) for a period of fifteen (15) years commencing on the Delivery Start Date (as defined herein) (the “KMEA-SWPA PSC” as defined below in Section 0 below), whereunder KMEA will purchase, on a combined basis and on behalf of certain

cities in the State of Kansas, including the City (collectively, the “Participants”), the Participants’ allocations of hydroelectric power and energy from reservoir projects, constructed and operated by the U.S. Corps of Engineers, as such power and energy become available; and

WHEREAS, this Agreement is intended to enable KMEA to pass through a share of the benefits and obligations of the KMEA-SWPA PSC to City, such that neither KMEA nor City obtains a benefit or incurs a burden or obligation due to a drafting or other difference between this Agreement and the KMEA-SWPA PSC; and

WHEREAS, City desires to utilize its allocation of federal hydroelectric power from SWPA by participating in the SWPA Project, pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

ARTICLE ONE: DEFINITIONS

Any capitalized words used but not defined in this Agreement or its Schedules shall have the meaning as defined in the KMEA-SWPA PSC or the SPP Open Access Transmission Tariff.

Act shall mean K.S.A. 12-885, *et seq.*, as amended, and all laws amendatory or supplemental thereto.

Agreement shall mean this SWPA Project Agreement between City and KMEA.

Business Day shall mean any weekday (*i.e.*, other than Saturday or Sunday) that is not a holiday observed by banks in the State.

City shall mean City of Oberlin, Kansas and its permitted successors and assigns.

City Entitlement shall mean 200 kilowatts, which is the City’s individual allocation of Federal Power as set forth in Schedule 4.1, and as may be adjusted pursuant to this SWPA Project Agreement. Beginning on the first day of the month following the date that all six generating units at the Harry S. Truman project have been declared in commercial operation by Southwestern at full capacity (160,000 kilowatts) without operational constraints which would restrict the generating capability of such project and that such units are interconnected with the System of Southwestern, the City Entitlement shall include the additional 100 kilowatt entitlement associated with the Harry S. Truman project as set forth in Schedule 4.2(c), and as may be adjusted pursuant to this SWPA Project

Agreement.

City Percentage shall mean the fraction equal to the City Entitlement divided by KMEA's purchase amount under the KMEA-SWPA PSC (defined therein as the Peaking Contract Demand), expressed as a percentage.

Contract Year shall mean the 12-month period beginning on June 1st of each year and extending through May 31st of the following year.

Delivery Start Date shall mean June 1, 2019.

Effective Date shall mean the date as of which this Agreement has been executed by both Parties, as reflected on the signature page(s).

Event of Default shall have the meaning assigned to it in Section 11.1.

FERC shall mean the Federal Energy Regulatory Commission, or its successor in function.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

Governmental Authority shall mean (a) any federal, state, local, municipal or other government or (b) any other governmental, quasi-governmental, regulatory or administrative agency, commission or other authority (including SPP, FERC, NERC and any applicable regional reliability entity) lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power.

KMEA shall mean the Kansas Municipal Energy Agency, and its permitted successors and assigns.

KMEA Board of Directors shall mean the KMEA board of directors appointed by each Member pursuant to the provisions of Article V of the KMEA Bylaws and authorized in accordance with Article VII of the Second Amended and Restated Agreement to Create a Municipal Energy Agency.

KMEA-SWPA PSC shall mean the Power Sales Contract between KMEA and SWPA for the period commencing on June 1, 2019, as amended from time to time.

Late Interest Rate shall mean, for any date, the lesser of (a) 1/365 of the sum of the per annum prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) plus two percentage points (200 basis points) and (b) the maximum rate permitted by applicable law. In applying the Late Interest Rate, interest shall be compounded daily. In the event that the prime lending rate is no longer published in *The Wall Street Journal*, KMEA and the Participants will select an appropriate replacement source for the prime rate.

Members shall mean all members of KMEA, including City, all being municipal corporations or boards of public utilities, in either case (a) organized and existing under the laws of the State and (b) authorized, under the laws of the State, to engage in the local distribution and sale of electric power and energy.

NERC shall mean the North American Electric Reliability Corporation.

Participant(s) shall mean City and/or one or more other Members who have executed a SWPA Project Agreement that is then in effect.

Payment Default shall have the meaning assigned to it in Section 11.1(a).

Person shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, an unincorporated organization or any government or political subdivision thereof.

SPP shall mean Southwest Power Pool, Inc., or any successor thereto.

SPP Tariff shall mean the Open Access Transmission Tariff of SPP, as it may be amended from time to time.

State shall mean the State of Kansas.

SWPA shall mean the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration.

SWPA Project Agreement shall mean this Agreement or any substantially identical agreement entered into by KMEA with another Participant.

Term shall mean the period in which this Agreement is in effect as set forth in Article Two.

Uncontrollable Force shall mean any force which is not within the control of the Party affected, including, but not limited to, failure of water supply, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, riot, civil disturbance, labor disturbance, sabotage, war, act of war, terrorist acts, or restraint by court of general jurisdiction, which by exercise of due diligence and foresight

such Party could not reasonably have been expected to avoid.

ARTICLE TWO: TERM

2.1 Term. This Agreement shall be effective and binding upon execution by both of the Parties as reflected on the signature page(s) below, and (absent earlier termination as permitted hereunder) shall continue in effect until termination of the KMEA-SWPA PSC. Deliveries shall commence on the Delivery Start Date and continue through the end of the Term.

2.2 Termination.

(a) The Parties acknowledge that under the KMEA-SWPA PSC, if the rates and/or terms and conditions set forth in SWPA's Schedule 13 (which sets forth the rates and terms and conditions for Hydro Peaking Power, Peaking Energy, and Supplemental Peaking Energy) are increased, decreased, modified or superseded, KMEA has the right to terminate the KMEA-SWPA PSC. KMEA agrees not to terminate the KMEA-SWPA PSC without the concurrence of a majority of the Participants.

(b) If there is a change in the rates and/or terms and conditions set forth in SWPA's Schedule 13 and KMEA does not exercise its right to terminate the KMEA-SWPA PSC within the time period for doing so set forth in the KMEA-SWPA PSC, the City shall have the option of terminating its City Entitlement either (1) pursuant to Section 9.2, or (2) coincident with the effective date of a commensurate reduction in the amount of KMEA's purchases under the KMEA-SWPA.

(c) For any reason, the City shall have the option of terminating its City Entitlement either (1) pursuant to Section 9.2, or (2) coincident with the effective date of a commensurate reduction in the amount of KMEA's purchases under the KMEA-SWPA PSC.

(d) If the City seeks to terminate its City Entitlement pursuant to Sections 2.2(b), 2.2(c), or 9.2, it shall provide written notice to KMEA.

ARTICLE THREE: RELATIONSHIP TO OTHER CONTRACTS

3.1 Other SWPA Project Agreements. Except for the identity of the Participants and each City Entitlement and City Percentage (and, as applicable, other information specific to each individual Participant), this Agreement is and shall remain identical to the other SWPA Project Agreements.

3.2 Relationship to SPP Markets. The Parties agree that this Agreement is premised on the continuing ability of KMEA to transmit through the SPP transmission system Federal Power and Federal Energy purchased by KMEA from SWPA under the KMEA-SWPA PSC and the operation of SPP's centralized markets. If, during the Term, the City's load will no longer be located within SPP

then the Parties agree to undertake in good faith negotiations to amend this Agreement to provide for physical delivery to the City of its properly allocable share of the products available from the SWPA System, or otherwise to provide City with its properly allocable share of benefits from the SWPA Project, through means consistent with then-applicable tariffs. The Parties acknowledge that no such amendments shall diminish City's obligation to make payments to KMEA as required pursuant to Article Five.

3.3 Transmission. KMEA will arrange transmission service for delivery of the City Entitlement and associated energy from the SWPA System to the City.

ARTICLE FOUR: SWPA PROJECT AND CITY PARTICIPATION

4.1 City's Entitlement. Beginning on the Delivery Start Date, City shall purchase its City Percentage of the Federal Power and Federal Energy that KMEA purchases pursuant to the terms and conditions of the KMEA-SWPA PSC. It is the intent of KMEA and the City that the City's City Percentage of the benefits and obligations accruing to KMEA under the KMEA-SWPA PSC shall be flowed through to the City pursuant to this Agreement. Accordingly, in the event of a conflict between the terms of this Agreement and the KMEA-SWPA PSC, the Parties to this Agreement shall look to the terms of the KMEA-SWPA PSC to attempt to resolve such conflict. The City Entitlements and City Percentages of all Participants shall be set forth in Schedules 4.1 and 4.2(c) attached to this Agreement. KMEA will update Schedules 4.1 and 4.2(c) periodically as necessary, including without limitation to reflect changes resulting from actions taken pursuant to Sections 2.2, 9.2, 11.4, 12.2, 12.3 and/or any other applicable provision of this Agreement.

4.2 SWPA Operations.

(a) KMEA shall schedule Federal Energy purchased under the KMEA-SWPA PSC on behalf of Participants with the aim of optimizing the use of Federal Energy available under the KMEA-SWPA PSC for the Participants as a group.

(b) The Parties acknowledge that under the KMEA-SWPA PSC, KMEA is to provide written notice to SWPA within 30 days of issuing or receiving a notice of termination of any Participant's SPA Project Agreement. The effect of such termination shall be determined pursuant to the terms of the KMEA-SWPA PSC, which provides that in such instances an adjustment of sales will be at SWPA's sole option and in SWPA's sole judgment.

(c) The Parties acknowledge that pursuant to the KMEA-SWPA PSC, beginning on the first day of the month following the date that all six generating units at the Harry S. Truman project have been declared in commercial operation by SWPA at full capacity (160,000 kilowatts) and

interconnected with the System of SWPA without operational constraints which would restrict the generating capability of such project, KMEA shall increase its purchase of Hydro Peaking Power under the KMEA-SWPA PSC by 3,700 kilowatts. As of the effective date of such increase, each Participant's City Entitlement and City Percentage shall be as set forth in Schedule 4.2(c).

4.3 SPP Operations.

(a) Federal Energy scheduled by KMEA under the KMEA-SWPA PSC will be treated as imports in the SPP Integrated Marketplace, and KMEA will settle with SPP for all related charges and revenues. All such revenues received by KMEA and costs incurred by KMEA in connection with the KMEA-SWPA PSC will be allocated among the Participants based on their City Percentages, subject to Section 11.3 and other relevant provisions of Article ARTICLE Eleven: if a Participant is in default under this Agreement. Each month, KMEA shall distribute to City its share of net revenues received by KMEA from SPP in connection with the KMEA-SWPA PSC in the form of a credit on the monthly invoice rendered pursuant to Section 6.1.

(b) KMEA shall cooperate as necessary with SWPA, SPP, and, to the extent KMEA is not the load responsible entity ("LRE") for all of the Participants, each LRE Participant (or the Market Participant representing it) to have the KMEA-SWPA PSC recognized as "Firm Power" serving the Participants for purposes of compliance with the resource adequacy provisions set forth under Attachment AA to the SPP Tariff. KMEA shall provide a copy of the KMEA-SWPA PSC to SPP in compliance with Attachment AA to the SPP Tariff.

ARTICLE FIVE: COST RESPONSIBILITY

5.1 General Principle. It is the Parties' intention that City will be responsible for its allocable share (as determined pursuant to this Article Five) of (a) the Federal Power and Federal Energy charges KMEA incurs in connection with the KMEA-SWPA PSC, (b) any other charges KMEA incurs under or in connection with the KMEA-SWPA PSC, and (c) KMEA's administrative and other reasonable costs associated with its operation of the SWPA Project (which shall include an allocable share of KMEA's general costs of providing services that are not directly assignable to any given project). City's obligation to pay for its allocable share of such costs shall be effective upon the Delivery Start Date and continue until all amounts due hereunder are paid in full notwithstanding the occurrence of any event, the availability of the Federal Power and Federal Energy, or the taking of any action permitted by this Agreement. The provisions that follow are intended to implement, but not to narrow, this intention.

5.2 Cost Responsibility for SWPA Project Costs. Starting with the first month following the Delivery Start Date, City shall pay Federal Power and Federal Energy charges, transmission charges and administrative charges that reflect its properly allocable share of all of KMEA's net costs related to the SWPA Project.

(a) Each month, City's SWPA Project capacity and energy charges shall be calculated as the City Percentage of the total of KMEA's payments to SWPA for Federal Power and Federal Energy under the KMEA-SWPA PSC. The Parties acknowledge that the rates to be paid by KMEA to SWPA for Federal Power and Energy (except Excess Energy, if any) shall consist of the Capacity Charge, the Energy Charge, and any other applicable charges specified in, and assessed by SWPA against KMEA pursuant to, SWPA's then-effective Rate Schedule enumerating its Wholesale Rates for Hydro Peaking Power and Seasonal Peaking Power. The Parties acknowledge that the rates to be paid by KMEA to SWPA for Excess Energy, if any, shall consist of the Excess Energy Charge, and any other applicable charges specified in, and assessed by SWPA against KMEA pursuant to, SWPA's then-effective Rate Schedule enumerating its Wholesale Rates for Excess Energy. KMEA shall provide to all Participants timely notification of any revisions to the rates and/or terms and conditions of SWPA's Rate Schedule enumerating its Wholesale Rates for Hydro Peaking Power and Seasonal Peaking Power and/or Rate Schedule enumerating its Wholesale Rates for Excess Energy.

(b) Each month, City's SWPA Project transmission charge shall be its properly allocable share of all transmission-related costs paid by KMEA for the month that are directly related to the SWPA Project and that are not otherwise reimbursed to KMEA by the City pursuant to any other agreement between the Parties. Such transmission-related costs may include, without limitation, costs of upgrades, charges to fund credits to upgrade sponsors under Attachment Z2 of the SPP tariff, and any costs associated with Auction Revenue Rights, Transmission Congestion Rights or Long-Term Congestion Rights, in each case arising in connection with the SWPA Project.

(c) City's administrative charge each month shall be (i) an amount established by KMEA from time to time based on KMEA's budget, plus (ii) where applicable, City's portion of KMEA's costs incurred in the prior month that are related to the SWPA Project but were not included in KMEA's budget.

ARTICLE SIX: BILLING AND PAYMENTS

6.1 Timing and Method of Invoices. KMEA shall bill the City monthly for the charges due KMEA under this SWPA Project Agreement. KMEA shall prepare and render such monthly invoices based on (a) its actual payment of

charges assessed to KMEA for the preceding month for Federal Power and Federal Energy under the KMEA-SWPA PSC, (b) its settlement of market charges and credits under the SPP Tariff related to imports of such Federal Energy, and (c) SPP invoices to KMEA for transmission service. KMEA shall provide each monthly invoice by e-mail to the City on or before the 20th calendar day of the month

6.2 Timing and Method of Payments. City shall pay the invoiced amount by the last Business Day of the month (provided, however, that the City shall not have less than seven (7) Business Days after issuance of the invoice in which to make its payment), via a bank wire transfer or ACH debit to KMEA's bank account in accordance with the instructions provided in writing by KMEA. Interest shall be payable on all amounts not paid on or before the payment due date, over the actual number of days elapsed from the payment due date to the date such amounts are paid, at the Late Interest Rate.

6.3 True-Ups. To the extent any portion of a monthly invoice is based on KMEA's budget, SPP market settlements that are subject to further adjustment, or other estimates or projections, KMEA shall true up the related charges as soon as it has the necessary information regarding actual costs. Any overpayments by City shall be credited on the next invoice provided to City, and any underpayments shall be added to the next invoice provided to City.

6.4 Disputes. If City disputes any bill issued hereunder or the existence or extent of any obligation to make any payment hereunder, it shall nevertheless make payment of all bills when due in full with a written protest, submitted at the time of or subsequent to such payment, directed to KMEA. Any such protest shall be subject to the limitations set forth in Section 6.6. When any dispute regarding payment is resolved, any refunds due shall be paid (or credited) within ten (10) days thereafter, based upon the actual number of days elapsed from the date paid until the date refunded or offset.

6.5 Audits. Not more than once a year, one or more of the Participants may conduct an audit of (i) records maintained by KMEA in connection with the SWPA Project, and (ii) all costs charged to each Participant. If City wishes to initiate such an audit, it shall offer the other Participants the opportunity to participate. The costs of such audits shall be borne by the Participants that agree to participate in the audit, either directly or through reimbursement to KMEA. KMEA shall cooperate with one such audit in any given twelve-month period, by making available documents and other information reasonably requested in connection therewith, during normal business hours.

6.6 Restriction on Challenges.

- (a) No challenge may be raised by the City with respect to the validity of costs incurred by KMEA under the KMEA-SWPA PSC (including challenges to the correctness and/or prudence of such costs) except to the

extent that KMEA can in turn raise the challenge under the KMEA-SWPA PSC, and the resolution of any such challenge under the KMEA-SWPA PSC shall be dispositive as between City and KMEA.

(b) No challenge may be raised by the City with respect to the validity of (i) market charges and credits under the SPP Tariff for imports of Federal Energy under the KMEA-SWPA PSC or (ii) if applicable, SPP transmission charges, except to the extent that KMEA can in turn raise the challenge under the SPP Tariff, and the resolution of any such challenge under the SPP Tariff PSC shall be dispositive as between City and KMEA.

6.7 Pass-Through of Refunds.

(a) If, pursuant to the KMEA-SWPA PSC, KMEA receives any refund (as opposed to credits against its monthly bills, which will simply reduce KMEA's costs to be passed through to City hereunder) of any of its SWPA Project costs, it shall promptly pay to City an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from City the charges to which the refund relates.

(b) If, pursuant to the SPP Tariff, KMEA receives any refund (as opposed to credits that simply reduce KMEA's costs to be passed through to the City hereunder) of any market charges or transmission charges under the SPP Tariff, it shall promptly pay to City an allocable share of such refund based on the same methodology and percentage or billing determinant(s) that were originally used to collect from City the charges to which the refund relates.

6.8 Unconditional Nature of Payment Obligation. All amounts payable by City under this Agreement shall be due irrespective of the actual availability of Federal Energy associated with the Federal Power, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of KMEA or any other person under this Agreement or any other agreement for any cause whatsoever.

ARTICLE SEVEN: INFORMATION REGARDING SWPA PROJECT

7.1 Provision of Information on SWPA Project. KMEA will make reasonable efforts to obtain any information requested by City regarding the SWPA Project.

7.1 KMEA Budgets. KMEA's annual budget will include allocations to the SWPA Project. City shall have the right to review and have input on the KMEA budget via the KMEA Board of Directors.

ARTICLE EIGHT: LIABILITY AND INDEMNIFICATION

8.1 General Indemnification of KMEA. City expressly agrees, proportionate to the City's Percentage and to the fullest extent permitted by law, to indemnify, hold harmless and defend KMEA against any and all claims, liability, costs or expenses (including without limitation attorneys' fees and expenses) for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of the KMEA-SWPA PSC, KMEA's participation in the SWPA Project, and/or the generation, transmission or distribution of capacity and energy from the SWPA System, unless such loss, damage or injury is the result of bad faith, gross negligence, or reckless or willful misconduct of KMEA or its employees acting within the course and scope of their employment.

8.2 Waiver of Indirect Damages. To the fullest extent permitted by law, neither Party shall be liable to the other for punitive, indirect, exemplary, consequential, or incidental damages arising in connection with this Agreement.

8.3 Waiver of Sovereign Tort Immunity. Nothing herein shall be construed as a waiver by City of the sovereign tort immunity granted to City under the laws of the State.

ARTICLE NINE: ASSIGNMENT

9.1 Assignment. This SWPA Project Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Parties; provided, however, that neither this SWPA Project Agreement nor any interest herein shall be transferred or assigned by either Party except with the consent, in writing, (a) of the other Party, which consent shall not be unreasonably withheld, and (b) if and as necessary, of SWPA.

9.2 Voluntary Transfer of City Entitlement to Other Participant(s). For any reason, the City shall have the option of seeking to terminate its City Entitlement by transferring its City Entitlement to one or more other Participants. In this event, KMEA shall undertake or cause to undertake the following actions in the order indicated:

- (a) KMEA shall offer to allow each Participant that is not in default to acquire a pro-rata portion of the City Entitlement of the Participant seeking to terminate. Any part of the City Entitlement of the Participant seeking to terminate that shall be declined by any non-defaulting Participant shall be reoffered pro rata to the non-defaulting Participants that have accepted in full the first such offer. Such reoffering shall be repeated until the City Entitlement of the Participant seeking to terminate shall have been reallocated in full or until all non-defaulting Participants shall have declined to take any additional portion of such defaulting Participant's City Entitlement.

- (i) If the City Entitlement of the Participant seeking to terminate has been fully reallocated to one or more non-defaulting Participants, that Participant shall be permitted to terminate its City Entitlement.
- (ii) If the City Entitlement of the Participant seeking to terminate has not been fully reallocated to one or more non-defaulting Participants, that Participant shall have the option of terminating its City Entitlement provided that (1) KMEA is able to reduce its purchases under the KMEA-SWPA PSC by an amount equal to the portion of the City Entitlement not reallocated to one or more non-defaulting Participants, and (2) the termination of the City Entitlement does not take effect until such reduction to KMEA's purchases under the KMEA-SWPA PSC becomes effective.

(b) If, at the time of such offers described in Section 9.2(a) above, all six generating units at the Harry S. Truman project have been declared in commercial operation without operational constraints which would restrict the generating capacity of such project and such units are interconnected with the System of SWPA, then such offers shall include the additional entitlement associated with the Harry S. Truman Project in the City Entitlement. Otherwise, it is understood and agreed that any Participant's increased City Entitlement voluntarily acquired pursuant to Section 9.2(a) above shall carry with it the obligation to purchase a commensurate additional entitlement associated with the Harry S. Truman Project if and when the capacity and energy purchased by KMEA is increased pursuant to the KMEA-SWPA PSC as a result of the commercial operation of the Harry S. Truman project, as provided in Section 4.2(c)

(c) In the event of a termination of any Participant and reallocation of its City Entitlement pursuant to this Section 9.2, KMEA shall prepare a revised Schedule 4.1 and 4.2(c) reflecting the revised City Entitlements and City Percentages of all Participants.

ARTICLE TEN: DISPUTE RESOLUTION

10.1 Dispute Notice. If a dispute arises between the Parties, then the aggrieved Party may provide written notice thereof to the other Party, including a detailed description of the subject matter of the dispute.

10.2 Negotiations. Representatives of the Parties shall in good faith attempt to resolve such dispute by informal negotiations within ten (10) Business Days from the date of receipt of a dispute notice under Section 10.1.

10.3 Involvement of Senior Executives. If the dispute is not resolved within ten (10) Business Days following receipt of the dispute notice or such later date as the Parties may mutually agree, then each Party shall promptly designate its most senior executive responsible for the subject matter of the dispute who shall have authority to resolve the dispute. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the dispute and shall meet within twenty (20) Business Days, at a time and place mutually acceptable to the senior executives.

10.4 Arbitration. If the senior executives are unable to resolve the dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the dispute shall, subject to Section 10.5, be resolved solely and exclusively by binding arbitration, using the following procedures (absent agreement of the Parties to different procedures).

(a) The arbitration shall be conducted before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect, except as modified herein. The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the “Demand”), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief. The Demand shall be accompanied by all relevant supporting documents.

(b) Unless the dispute uniquely affects just one Participant, each other Participant that is affected by the dispute shall, for purposes of a particular arbitration, declare which Party it supports. In applying the provisions of this Section 10.4, each reference to a “Party” will be deemed to include all aligned Participants, and the aligned parties shall act in a collective manner to exercise their rights and fulfill their obligations hereunder. A Participant that elects not to participate will nonetheless be bound by the outcome of the arbitration.

(c) Arbitration shall be held in Johnson County, Kansas. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq. Notwithstanding references herein to use of the AAA Commercial Arbitration Rules and possible AAA selection of arbitrators, it is not the Parties’ intention to require use of AAA or any other organization to administer any arbitration.

(d) The Party asserting a claim for relief and the Party opposing such relief shall each select one arbitrator within ten (10) days of the receipt of the Demand, or if such Party fails to make such selection within ten (10) days from the receipt of the Demand, the AAA shall make such appointment upon the written request of the other Party. The two arbitrators thus appointed shall select the third arbitrator, who shall act as

the chairman of the panel. If the two arbitrators fail to agree on a third arbitrator within thirty (30) days of the selection of the second arbitrator, the AAA shall make such appointment.

(e) The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy regarding any claims, counterclaims, issues, or accountings presented to the arbitration panel. The arbitration panel shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(f) This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(g) Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to (1) consider or award any form of damages barred by Section 8.2, or any other multiple or enhanced damages, whether under statutory or common law, or (2) require any modifications to this Agreement.

(h) Each Party understands that it will not be able to bring a lawsuit concerning the affected dispute, except as necessary to enforce this Section 10.4 or an arbitration award.

10.5 Agency Jurisdiction. Notwithstanding anything to the contrary in Section 10.4, the Parties acknowledge and agree that a dispute over which a Governmental Authority has exclusive jurisdiction shall, in the first instance, be brought before and resolved by such Governmental Authority.

ARTICLE ELEVEN: DEFAULT AND REMEDIES

11.1 Events of Default. The following shall be Events of Default under this Agreement:

- (a) The failure of City to make a payment when due under this Agreement (a "Payment Default"); or
- (b) Assignment of this Agreement by City, other than as permitted pursuant to Article ARTICLE Nine: or any other action or omission by City that would cause KMEA to be in breach of any provision of the KMEA-SWPA PSC; or
- (c) The failure of a Party to perform or abide by any other material obligation under this Agreement within 60 days of receipt of written notice of non-performance; *provided, however*, that if such default cannot

be cured within such 60-day period, no Event of Default shall occur for so long as the non-performing Party is diligently pursuing a cure, and such non-performance is curable; or

(d) The commencement, with respect to a Party, by such Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for its winding-up or liquidation.

11.2 Remedies. If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity (except as limited in Section 8.2 and Section 11.5, and subject to the provisions of Section 10.4). The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

11.3 Suspension of City Entitlement. If City has committed a Payment Default, KMEA may temporarily suspend City's right to receive its City Entitlement and the associated City Percentage of revenues and benefits. Such suspension shall continue until the earlier of (i) City shall have cured such Payment Default, (ii) the City shall have voluntarily transferred its City Entitlement to non-defaulting Participant(s) pursuant to Section 9.2, or (iii) KMEA shall have reduced its purchases under the KMEA-SWPA PSC by an amount equal to the City Entitlement.

11.4 Termination of Participation. If at any time City fails to cure a Payment Default within sixty (60) days after notice of City's non-payment has been provided by KMEA, KMEA may terminate the City's right to its City Entitlement; provided, however, City's obligation to make payments under this Agreement shall not be eliminated or reduced until such time as KMEA is able to reduce its obligations under the KMEA-SWPA PSC or the City shall have voluntarily transferred its City Entitlement to non-defaulting Participant(s) pursuant to Section 9.2. KMEA shall promptly provide notice of any such termination to all Participants.

11.5 No Termination by City. In response to any Event of Default by KMEA, City shall not have the right to terminate this Agreement unless such termination is undertaken pursuant to Section 2.2(b), 2.2(c), or 0 of this Agreement.

ARTICLE TWELVE: TRANSFER OF CITY ENTITLEMENT FOLLOWING TERMINATION FOR DEFAULT

In the event of a default by any Participant and termination of such Participant's City Entitlement (plus its entitlement to Peaking Energy and Supplemental Peaking Energy, if any) pursuant to Section 11.4 of its SWPA Project Agreement, the following provisions shall be implemented to reallocate the City Entitlement of the defaulting Participant during the time period from the effective date of termination of the defaulting Participant's SWPA Project Agreement until the earlier of (i) the effective date of a related reduction in the amount of Hydro Peaking Power to be made available to KMEA by a quantity equal to the Federal Power entitlement then applicable to the defaulting Participant (if and when agreed to by SWPA in its sole discretion), or (ii) the termination of this Agreement.

The defaulting Participant's City Entitlement shall be offered to all non-defaulting Participants in the manner described in Section 9.2 above.

In the event that less than all of a defaulting Participant's City Entitlement shall be voluntarily accepted, pursuant to Section 12.2 above, by the non-defaulting Participants, KMEA shall be relieved of any further obligation to attempt to dispose of the remaining part of such defaulting Participant's City Entitlement for the remaining months of KMEA's continued receipt of such defaulting Participant's City Entitlement; however, in such event, KMEA shall transfer pro rata (based upon then-current City Entitlement), to all other Participants which are not in default, the remaining part of such defaulting Participant's City Entitlement until such time as KMEA is able to reduce its purchases of Federal Capacity and Federal Energy pursuant to the KMEA-SWPA PSC in an amount equal to the unclaimed portion of the defaulting Participant's City Entitlement.

Any part of the Hydro Peaking Power and Peaking Energy of a defaulting Participant voluntarily or involuntarily transferred pursuant to this Article ARTICLE Twelve: to a non-defaulting Participant shall become a part of, and shall be added to, the City Entitlement of each transferee Participant, and the transferee Participant shall be obligated to pay for its City Entitlement increased as aforesaid, as if the City Entitlement of the transferee Participant, increased as aforesaid, had been stated originally as the City Entitlement of the transferee Participant in its SWPA Project Agreement. Provided, however, that with respect to any involuntary transfer pursuant to Section 12.3, the foregoing shall apply only to the period prior to any reduction of KMEA's purchases of Federal Capacity and Federal Energy pursuant to the KMEA-SWPA PSC in an amount equal to the unclaimed portion of the defaulting Participant's City Entitlement.

A defaulting Participant shall remain liable for all payments required to be made by it under its SWPA Project Agreement, except that the obligation of the defaulting Participant to pay KMEA shall be reduced to the extent that payments

shall be received by KMEA for that part of the defaulting Participant's City Entitlement which is voluntarily transferred to, and voluntarily accepted by, other Participants as provided in Section 12.2 of this Agreement.

ARTICLE THIRTEEN: UNCONTROLLABLE FORCE

If, for any reason of Uncontrollable Force, either of the Parties hereto shall be rendered unable, wholly or in part, to carry out obligations under this SWPA Project Agreement, other than the obligations of the City to make the payments required under the terms of this SWPA Project Agreement and to increase its City Entitlement as required by Sections 12.2 and 12.3 of this Agreement, then, if such Party shall give notice and the full particulars of such reasons, in writing, to the other Party within a reasonable time after the occurrence of the event or cause specified, the obligation of the Party giving such notice, insofar as it is caused by such Uncontrollable Force, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Under no circumstances shall Uncontrollable Force be a defense to, or in any way affect, the City's obligations either to make payments required by this SWPA Project Agreement or to increase its City Entitlement as required by Sections 12.2 and 12.3 of this Agreement.

ARTICLE FOURTEEN: REPRESENTATIONS AND WARRANTIES

14.1 KMEA's Representations. KMEA hereby makes the following representations, warranties and covenants to City as of the Effective Date and through the end of the Term:

- (a) KMEA is a governmental entity and body public and corporate duly organized, validly existing and in good standing under the laws of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- (b) The execution, delivery and performance by KMEA of this Agreement have been duly authorized by all necessary action.
- (c) This Agreement constitutes the legal, valid and binding obligation of KMEA, enforceable in accordance with its terms.
- (d) There is no pending, or to the knowledge of KMEA, threatened action or proceeding affecting KMEA before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, KMEA's sole continuing covenant with respect to this Section 14.1(d) shall be to take all necessary and reasonable actions to defend the

enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.

14.2 City's Representations. City hereby makes the following representations, warranties and covenants to KMEA as of the Effective Date and through the end of the Term:

- (a) City is a municipal corporation of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- (b) City has received an allocation of Federal hydroelectric power and associated energy pursuant to the terms and conditions of SWPA's Final Power Allocations (1980-1988) 45 F.R. 19032 (1980).
- (c) The execution, delivery and performance by City of this Agreement have been duly authorized by all necessary action.
- (d) This Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.
- (e) There is no pending, or to the knowledge of City, threatened action or proceeding affecting City before any Governmental Authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, City's sole continuing covenant with respect to this Section 14.2(e) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.
- (f) City is and shall remain throughout the term of this Agreement a Member of KMEA.
- (g) City will establish, maintain and collect such rates, fees and charges for the electric service of its electric utility system so as to provide revenues at least sufficient to enable City to make all payments required to be made by it under this Agreement and any other agreements with respect to its electric utility.
- (h) The obligations of City to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves. All payments made by City pursuant to this Agreement shall constitute operation and maintenance expenses of its electric utility system. The City shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement. The City shall not issue any evidence

of indebtedness with a lien on electric system revenues that is prior to the payment of operating and maintenance expenses.

(i) The City covenants to maintain its electric system in good repair in accordance with Good Utility Practice, to cooperate with KMEA, and to keep accurate records and accounts.

(j) The City shall not sell, lease or otherwise dispose of all or substantially all of its electric system, nor shall the City assign all or any part of its City Entitlement or any or all of its interests under this Agreement, except upon the approval of KMEA, such approval not to be unreasonably withheld or delayed.

(k) City's electric utility system shall not be made a part of an integrated utility system subsequent to the Effective Date of this Agreement if, in the opinion of a consulting engineer of national reputation selected by KMEA, the revenues of any other utility system(s) to be so integrated would not reasonably be expected to equal or exceed the costs and expenses thereof.

ARTICLE FIFTEEN: CREDITWORTHINESS

City shall provide such financial information and operating data as KMEA is required to obtain from City under the KMEA-SWPA PSC or any rules or regulations applicable to KMEA related to the SWPA Project.

ARTICLE SIXTEEN: MISCELLANEOUS

16.1 Applicable Law. The rights and obligations of the Parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State, without regard to conflicts of law doctrines.

16.2 Jury Trial. EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

16.3 Notices. Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in

the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed as follows, or to such other address as any Party may designate by written notice to the other Parties.

For notice to KMEA:

Kansas Municipal Energy Agency
6300 West 95th Street
Overland Park, KS 66212
Email: mahlberg@kmea.com

Attention: General Manager

For notice to City:

City of Oberlin, Kansas
1 Morgan Dr.
Oberlin, KS 67749

Attention: City Administrator

16.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

16.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law; but if any provision of this Agreement shall be prohibited by or deemed invalid under any applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

16.6 Parties Bound. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

16.7 Third-Party Beneficiaries. Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any Person other than the Parties, their respective successors and permitted assigns.

16.8 Entire Agreement. This Agreement states the rights of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, oral or written, with respect thereto.

16.9 Headings and Table of Contents. Section headings and the table of contents used in this Agreement (including headings used in any schedules and/or

exhibits attached hereto) are for convenience of reference only and shall not affect the construction of this Agreement.

16.10 Schedules and Exhibits. The schedules and exhibits hereto, together with all attachments referenced therein, are incorporated herein by reference and made a part hereof.

16.11 Amendments and Waivers.

(a) Except as expressly provided with respect to updates of Schedules 4.1 and 4.2(c), this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties.

(b) No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of the Party thereafter to enforce each and every provision thereof.

16.12 Survival. Except for Articles ARTICLE Eight: , ARTICLE Ten: , and ARTICLE Eleven: , and Articles ARTICLE Five: and ARTICLE Six: (to the extent applicable to obligations arising prior to termination), which shall survive termination of this Agreement, and except as otherwise expressly provided in this Agreement, the representations, warranties and obligations of each Party contained in this Agreement shall not survive the termination of this Agreement.

16.13 Further Assurances. Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by the other Party, all as may be reasonably necessary to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered under seal by its duly authorized representative as of the date set forth below.

KANSAS MUNICIPAL ENERGY AGENCY

By: _____
Name: Paul N. Mahlberg
Title: General Manager
Dated: _____

CITY OF OBERLIN

By: _____
Name:
Title: Mayor

[SEAL]

Attest: _____
Name:
Title: City Clerk
Dated: _____

SCHEDULE 4.1

City	City Entitlement (kilowatts)	City Percentage
Anthony	300	5.88%
Baldwin City	100	1.96%
Colby	500	9.80%
Garnett	300	5.88%
Herington	300	5.88%
Holton	300	5.88%
Horton	200	3.92%
La Crosse	200	3.92%
Lindsborg	300	5.88%
Neodesha	400	7.84%
Norton	300	5.88%
Oberlin	200	3.92%
Osawatomie	300	5.88%
Ottawa	900	17.64%
Saint Francis	100	1.96%
Sharon Springs	100	1.96%
Wamego	300	5.88%
Total	5,100	100%

SCHEDULE 4.2(c)

City	Additional Entitlement Associated with Harry S. Truman Project(kilowatts)	Total Entitlement (kilowatts)	City Percentage
Anthony	600	900	10.23%
Baldwin City	100	200	2.27%
Colby	400	900	10.23%
Garnett	300	600	6.82%
Herington	100	400	4.55%
Holton	300	600	6.82%
Horton	100	300	3.41%
La Crosse	100	300	3.41%
Lindsborg	100	400	4.55%
Neodesha	200	600	6.82%
Norton	300	600	6.82%
Oberlin	100	300	3.41%
Osawatomie	100	400	4.55%
Ottawa	500	1,400	15.91%
Saint Francis	100	200	2.27%
Sharon Springs	-	100	1.14%
Wamego	300	600	6.82%
Total	3,700	8,800	100%



Environmental Services, Inc.

320 West 4th Street, Colby, KS 67701 • Tel: 785-460-1956 • Fax: 785-460-4220 • www.milcoinc.com

March 29, 2019

David Sporn
City of Oberlin
1 Morgan rive
Oberlin, KS 67749

VIA EMAIL: dsporn@oberlinkansas.gov

RE: Kelling's Fine Foods / Reliance Auto
120 W. Commercial / 202 W. Commercial, Oberlin, KS
KDHE Project Code U6-020-00236 / U6-020-00324
MILCO Project No. M287-P1-33

Dear Mr. Sporn:

MILCO Environmental Services, Inc. would like permission to access City of Oberlin Right of Ways in order to install groundwater monitoring wells and perform groundwater sampling as part of a Limited Site Assessment for the Kelling's Fine Foods / Reliance Auto site. The work is being performed at the request of the Kansas Department of Health and Environment (KDHE). We will work with you to impact the property as little as possible. The wells are proposed in the ROW at the following locations: south of 201 W. Commercial, south of Raye's Fine Foods at 119 W Commercial, north of 202 W. Commercial, west of 102 S. Cass Ave, and east of apartments on S. Rodehaver; please see attached map showing the well locations.

If it is acceptable for MILCO and its subcontractors to access your property to install and sample one monitoring well as part of work for the Kelling's Fine Foods / Reliance Auto site and KDHE, please sign this letter and either fax the signed letter to us at (785) 460-4220, send via email to lmacneill@milcoinc.com or mail in the enclosed self-addressed, stamped envelope.

If you have any questions or need additional information, please do not hesitate to contact me at (785)-460-1956 or cell (308)-340-2513.

Respectfully submitted,
MILCO Environmental Services, Inc.

Leah MacNeill

LCM/

Enclosures

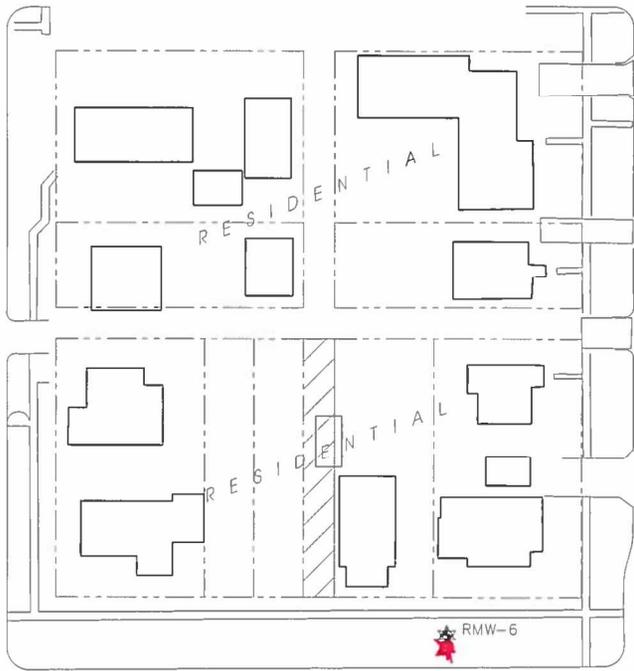
Acknowledged and accepted this ____ day of March, 2019.

By: _____ Title: _____

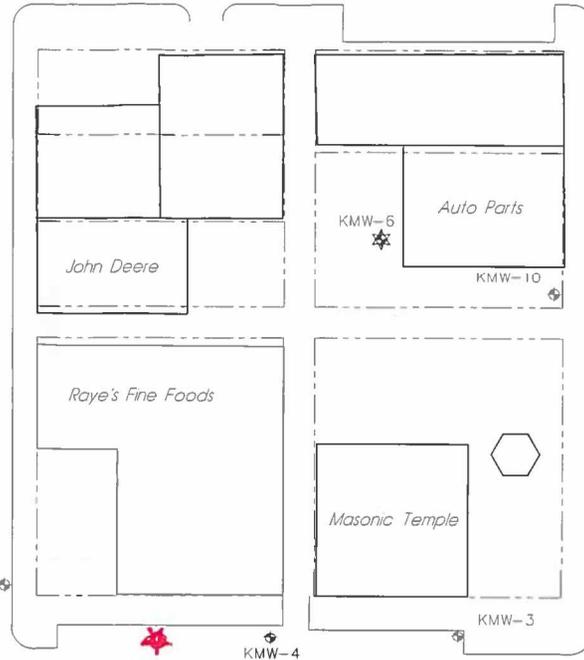
PLOTTED: 1/7/2019 8:13 AM SAVED: 1/7/2019 8:12 AM Brian S. Fahrenbruch C:\Projects\287\287-P1-33\Sampling_1-2019\Figure 2.dwg

Maple Street

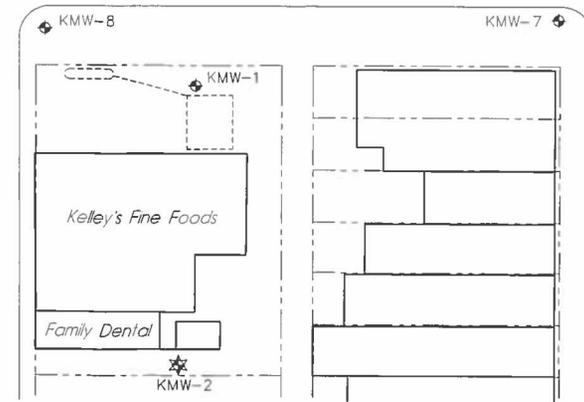
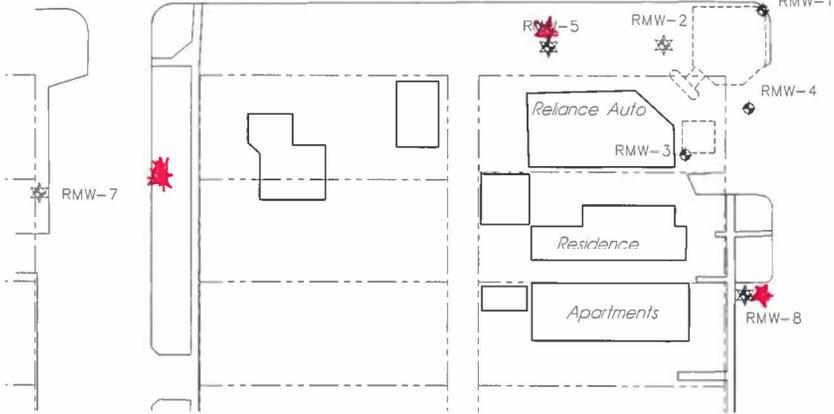
Cass Ave.



Rodehaver Ave.



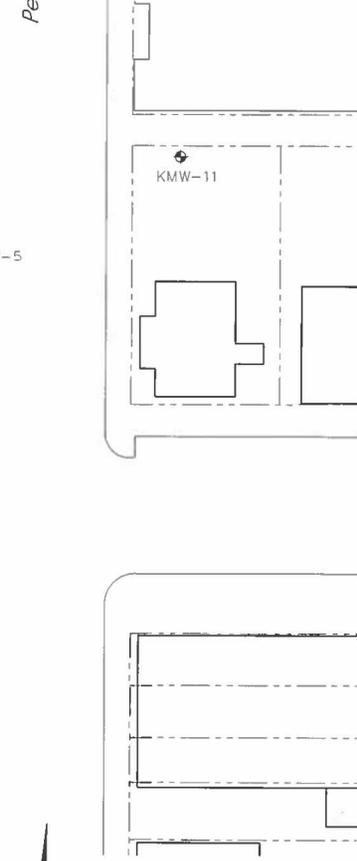
Commercial Street



LEGEND

- Proposed Well Location
- MONITOR WELL
- FORMER TANK BASIN & PUMP ISLANDS
- (21.3) TOTAL BTEX CONCENTRATION, ppb
- TOTAL BTEX CONTOUR
- NS NOT SAMPLED
- ND NOT DETECTED
- PLUGGED WELL

MEASURING DATE:
XXXXXX



SCALE: AS SHOWN

PROJECT NO. M287-P1-33

DATE: JANUARY, 2019

FIELD BOOK: MSA DWG NO.

DRAWN BY: BSF

APPROVED BY:

SCALE IN FEET

0 30 60 120

REVISIONS	BY

MILCO
Environmental Services, Inc.

Kearney, NE (308) 237-5923
McCook, NE (308) 345-4741
Cody, WY (307) 465-1855

KELLING'S FINE FOODS / RELIANCE AUTO
BTEX ISOCONCENTRATION MAP
 120 & 202 W. COMMERCIAL, OBERLIN, KS - U6-020-00236/00324

FIGURE 2

Pool Rules

1. All persons entering the swimming pool must sign in with the pool staff at the front desk before entering the dressing rooms or pool areas.
2. All children under 8 must be accompanied by a parent or responsible person. A signed letter from the child's legal guardian will need to be on file with the pool manager, indicating the child's responsible person. All youth not swimming are required to be safely seated away from the water.
3. No food, drink, chewing gum or glass will be to be brought into the facility.
4. No smoking is allowed in any part of the facility.
5. All swimmers or sunbathers, regardless of age, must wear a bathing suit to adequately cover his/her body. The pool manager in charge will make the decision whether a bathing suit is inappropriate.

Proper Swim Attire:

- * Lined swimsuits (no exposed metal buckles, rivets, buttons, etc.)
- * Toddlers and infants must wear plastic pants

6. Admission to the pool may be denied for any of the following reasons but not limited to: when an individual is apparently unable to care for themselves, intoxication, presence of a contagious disease, open sores, or wounds, or any condition that will jeopardize the health and safety of the general public.
7. All swimmers are required to shower before entering the pool.
8. No flotation devices of any type are allowed in the pool during public swim. US Coast Guard approved life jackets are allowed only when a child is accompanied by a parent or responsible adult.
9. Kickboards may be used only by adults participating in adult lap.
10. No diving is allowed in shallow end.
11. Pool equipment/toys must be approved by pool staff before use in pool.
12. No running, pushing or horseplay Lifeguards will warn offenders and ask them to leave on the 2nd infraction. No refunds will be given to those who are asked to leave.
14. Profanity, improper language and behavior are prohibited and are grounds for immediate suspension from the pool. Suspension may be continued for a time period to be determined by the Pool Manager
15. Pets are prohibited throughout the entire facility.
16. No One allowed in the lifeguard chairs except city lifeguards.

The City of Oberlin, Kansas



Oberlin City Pool 2019

Pool Opens:
May 25th

Pool Closes:
Sept. 2nd

Hours of Operation

Monday Thru Friday	1:00 – 5:00
	6:30 – 8:00
(Adult Morning Swim)	11am – 12:00
(Adult Evening Lap Swim)	6:00 – 6:30
Saturday and Holidays	1:00 – 6:00
Sunday Afternoon	1:00 – 5:00
Sunday Evening — (Family Night)	
	6:00 – 8:00

Pool Closing Policy

The pools will be closed when one of the following conditions exist:

1. Presence of lightning or thunder.
2. During home swim meets and special events.
3. Closed evenings of Fair Week.
4. As deemed necessary by the pool Management Staff.

For current pool/swimming conditions call the pool desk at 785-475-3112



Pool Fees

Membership	Seasonal
Passes	
Individual	\$50.00
Family	\$100.00
Seniors (60 & over)	\$35.00
Public Swim	
Children (under 18)	\$2.00/day
Adult (18 and up)	\$3.00/day
Seniors (60 and over)	\$1.00/day

Activities

Swim Lessons (2 week sessions) \$20.00

Pool Rental

Throughout the summer season, the pool is available for rentals on Saturdays from 6 pm—10 pm and on Sundays from 8pm - 10 pm.

Rental Includes: pool, dressing facility, showers, restrooms and life-guard supervision. No power cables allowed. No oversized amplified music.

Rate: \$150 for 2 hours 1-75 guests
\$200 for 2 hours 76-100 guests

All rentals require an Administrative Fee (non refundable) - \$25.00

The maximum pool rental capacity is 100 people. To make a pool reservation or if you have any questions or need more information about renting the pool, please call 785-475-3112.

City of Oberlin
Pool Sales Tax 1.5%

	Combined Compensating Use and Sales Taxes							Monthly
	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Average</u>
Jan	-	25,113.79	27,878.94	25,071.42	28,050.89	27,304.57	28,654.58	27,012.37
Feb	-	25,812.17	35,654.30	38,949.35	27,276.00	26,193.54	30,136.30	30,670.28
Mar	-	26,557.20	29,240.90	33,459.39	23,601.06	26,250.03	26,330.45	27,573.17
Apr	-	25,361.14	25,126.89	21,767.04	29,859.93	24,359.68	-	25,294.94
May	1,467.26	29,197.14	27,105.35	32,218.75	27,549.71	29,431.59	-	29,393.96
Jun	24,886.18	29,873.34	33,842.30	24,013.85	26,235.58	26,581.55	-	27,572.13
Jul	24,921.71	29,566.17	29,120.74	29,477.11	31,657.01	29,115.06	-	28,976.30
Aug	28,367.49	31,204.89	29,646.03	27,381.82	29,792.86	36,510.06	-	30,483.86
Sep	27,807.99	32,435.03	29,933.21	29,188.82	26,014.42	38,172.28	-	30,591.96
Oct	27,843.89	32,038.99	26,786.35	29,454.74	31,921.94	38,432.74	-	31,079.78
Nov	28,875.57	30,695.26	33,486.32	31,226.26	29,419.79	31,966.63	-	30,944.97
Dec	28,890.71	26,204.31	27,669.43	34,929.73	26,304.10	30,714.92	-	29,118.87
	<u>193,060.80</u>	<u>344,059.43</u>	<u>355,490.76</u>	<u>357,138.28</u>	<u>337,683.29</u>	<u>365,032.65</u>	<u>85,121.33</u>	
	Total Combined Compensating Use and Sales Tax Received						2,037,586.54	
	Overall Monthly Average				70 Months	29,108.38		

2019 Board Meeting Notes for Month of March

Attending: Matt Barnes Vicky Ray Ruth Wolfram Ronda Schroer

Warren Bainter Violet Shaw Linda Dixon Marlene Moxter- Pres. FoOLs

Minutes from previous month approval:
motioned by: Warren
Seconded by: Vicky
Passed or Opposed: Passes

Financial Statement Approval: For March
Motioned by: Ruth
Seconded by: Linda
Passed or Opposed: Passes

Donations:

\$500 from Collection Development Grant from NWKLS for purchase books to update the classics collection.
\$800 Courier Grant from NWKLS for interlibrary loan, pickup and delivery.
\$139.35 from FoOLs for After School Program and Story Hour
\$1,500 from Humanities Kansas talk TALK Series. The money is used for discussion group leaders. The spring sessions are planned and there will be a fall session also.

Personnel:

Stacey Marcum was hired for bookkeeper. Stacey was trained this month with Sherry.
Marcia is back from her 3 month vacation.

Facility and Maintenance:

Warren reported that the stone sign out front is leaning. The city will be notified.

Financials:

Sherry and Stacey have completed the financials and reconciliation and the checks are ready to be signed.

Miscellaneous:

*The library is now charging for faxes and scanning beginning on March 1.

*Dave Fischer from NWKLS said they are renewing the contract with Xerox, rather than waiting 11 months when the contract is up, he can get a deal where NWKLS will pay Xerox for several libraries' copier rental and we would pay NWKLS monthly. Ronda said it is a savings for the library. The basic price would be 146.20 plus the price of copies run. We would get a new machine in 4-6 weeks. Warren moved and Vicky seconded to go ahead with this plan.

*Dave Fischer will install 3 more security cameras on Thursday this week. He also said they have fixed the 3D printer and he will bring it back. After some discussion, the printer will be kept upstairs.

*TALK series will begin on April 2nd. The theme is "It's a Hard Knock Life". The grant from Humanities Kansas will pay for the discussion leaders for the series

*Marlene gave a FoOLs report: April is library month and they have several events planned. April 9 is library workers day. April is DEAR day= drop everything and read; April 7-13 public library week. The book sale will begin this week with the set up on March 29th and the sale running all of April and May. FoOLs will provide volunteer workers as needed for the book sale.

Violet motioned for adjournment and Linda seconded. Meeting was adjourned.

Next meeting April 22, 2019 at 5 p.m.

