

This is a business meeting of the governing body for the City of Herington.
There is no implied or expressed right for persons outside the governing body
to speak or voice their opinion unless specifically recognized by the chair.

Regular Meeting
October 3, 2023
6:00 p.m.

1. Pledge of Allegiance

2. Call to Order

3. Public Forum

4. Additional Agenda Items:

5. Approval of Agenda

Motion _____ Seconded _____ Action _____
Commissioner McDonald, Commissioner Castleberry, Commissioner Urbanek
Commissioner Gares, Mayor Bell

6. Consent Agenda

- i. Minutes of the Regular Meeting September 19, 2023
- ii. Receive & File Boards and Commissions Minutes:
 - a. June 27, 2023 Planning Commission Minutes
 - b. August 2, 2023 CVB Minutes
 - c. August 21, 2023 Rec Commission Minutes

Motion _____ Seconded _____ Action _____
Commissioner McDonald, Commissioner Castleberry, Commissioner Urbanek
Commissioner Gares, Mayor Bell

7. Consider Appointment of Rhonda Rice to the Herington Planning Commission (Term 2023-2025)

Motion _____ Seconded _____ Action _____
Commissioner McDonald, Commissioner Castleberry, Commissioner Urbanek
Commissioner Gares, Mayor Bell

8. Consider KMEA and Herington Generating Capacity Contract

Motion _____ Seconded _____ Action _____
Commissioner McDonald, Commissioner Castleberry, Commissioner Urbanek
Commissioner Gares, Mayor Bell

9. Announcement on October 16-20 City-Wide Cleanup

10. Receive update from Police Chief

11. Receive update from Fire Chief

12. Presentation on EPA Brownfield Main Street Preservation Program

13. Consider purchase of new Server for City Hall network infrastructure

Motion _____ Seconded _____ Action _____
Commissioner McDonald, Commissioner Castleberry, Commissioner Urbanek
Commissioner Gares, Mayor Bell

14. Consider Extension of Remediation of lots at 901 E. Arnold until Oct. 31, 2023 (Res. 989, 990, 991)

Motion _____ Seconded _____ Action _____
Commissioner McDonald, Commissioner Castleberry, Commissioner Urbanek
Commissioner Gares, Mayor Bell

15. Executive Session – Executive Session – I move that the Herington City Commission recess into Executive Session, pursuant to the consultation with an attorney on matters that would be deemed privileged in the attorney-client relationship exception K.S.A. 75-4319(b)(2) in order to discuss potential litigation to include the following:

- Governing Body
- City Manager
- City Attorney
- _____

16. City Manager Comments

17. Commissioner Comments

18. Adjourn

Motion _____ Seconded _____ Action _____
Commissioner McDonald, Commissioner Castleberry, Commissioner Urbanek, Commissioner Gares, Mayor Bell

To join the City Commission meetings from your computer, tablet, or smartphone, go to
<https://www.youtube.com/channel/UCbvSBw6l4w85XQHSX0S1BXg> Public Forum Comments can be
dropped in the deposit box or emailed to cityoffice@cityofherington.com.

**Regular Meeting
September 19, 2023
6:00 p.m.**

The Herington City Commission met on the above date and time in the commission chambers at City Hall. In attendance were Mayor Robbin Bell, Commissioner Eric Gares, Commissioner Debi Urbanek (called in, then arrived late), Commissioner Ben Castleberry and Commissioner Dan McDonald. Also in attendance were City Manager Thatcher Moddie, City Attorney Brad Jantz, City Clerk Megan Lawrenz and Neighborhood Services Director James Masters. Others in attendance were Larry Mann, Chris McDonald, Gerry Bieker, Joe Kossmann, Jenifer and Jay Fredrick, Janet Wade, Jessica Goodale, Karen Soliz, Rhonda Rice and Shelly Wirtz.

The meeting opened with the pledge of allegiance.

Mayor Bell called the meeting to order.

Public Forum – Joe Kossmann 801 N Broadway – Pulled demo permit.

Additional Agenda Items – Add 6a D&A on Big Blue, move 9 and 10 to 12 and 13. 11, 12, 13 become 9, 10, 11. Remove item 14 VBO, change to an Executive Session for contract negotiations.

Approval of Agenda – Commissioner Gares made a motion to approve the agenda, seconded by Mayor Bell. Motion carried 4-0.

Consent Agenda – Commissioner Gares made a motion to approve the consent agenda including the following items: Minutes of the Regular Meeting September 5, 2023, and Receive & File July 19, 2023, CVB Minutes, seconded by Commissioner Castleberry. Motion carried 4-0.

6a. 222 West Main – Big Blue – at the last meeting commissioners requested moving forward with the quit claim deed. Brad has the deed completed but more discussion was needed before he could finish. Mayor Bell suggested presenting the quit claim deed as presented for the owner to review. The next step would be for the owner to take the porch plans before the zoning commission. Commissioner Gares made a motion to approve the quit claim deed and authorize the CM signature, then withdrew the motion.

Recognition of Gwen Owens-Wilson for her outstanding service to Herington – Janet Wade and Commissioners spoke to the many accomplishments and lifetime of service to the Herington Community.

Update from KMEA on Generator proposal – The generator has been delayed until March of 2026. KMEA presented a new contract to extend the timeline for staff to review. The contract will be placed on an agenda in October for formal vote. Megan to present budget amounts for repairs to the current generator.

Public Hearing on 112 W. Main Street exterior facade repairs – Opened at 6:44pm. Owners were not present, but staff has had communication with the owners. They have indicated that there are no structural issues and staff is hoping that the owners can remedy the cosmetic issues. Commissioner Gares made a motion to continue the hearing to December 19, 2023, seconded by Commissioner Castleberry. Motion carried 5-0. The public hearing closed at 6:48pm.

Update on 117 W Main Street – Rex Hay Property – Rex was last present for a meeting on June 20th and expressed that he couldn't be available as often as the commission requested due to his work schedule. He has been in contact with staff and is working on getting some estimates from two masonry companies. He is also working on the pillars in the front, and he is working to replace some garage doors. He plans to get the walls completed before he starts on the roof. He is scheduled to be on the agenda for the December 19, 2023, commission meeting.

Discussion on future water taps near Herington Lakes (New and Old) – A resident near the lake requested to tap into the Hope water line. Staff is requesting guidance on how the commission would like us to handle requests to tap into the Hope water line in the future. Staff to find out exactly how many taps we can have into the line.

Open - Public Hearing for 2024 Budget – The public hearing for the 2024 City of Herington Budget opened at 7:05pm, Larry Mann 319 N E St – Can't keep raising taxes, utilities, etc. Mentioned a lot of residents are on fixed income. The public hearing for the 2024 budget closed at 7:12pm.

Discuss and Action to certify the 2024 City of Herington Budget with a projected mill levy rate of 88.000 mills – Mayor Bell made a motion to approve the 2024 City of Herington Budget with a mill levy rate of 88.000, seconded by Commissioner Urbanek, Commissioner Gares made a motion to amend the motion to stipulate that the 5% salary increases be divided at 3% COLA, and up to 2% pay for performance, the motion to amend died for lack of a second. Mayor Bell made a motion to approve the 2024 City of Herington Budget with a mill levy rate of 88.000, seconded by Commissioner Urbanek. Motion carried 3-2, with Commissioner McDonald and Commissioner Castleberry casting the dissenting vote.

Commissioner Gares made a motion to stipulate that the 5% salary increases be divided at 3% COLA, and up to 2% pay for performance and to designate \$5,000 from the special project fund for Father Padilla for disk golf maintenance, seconded by Commissioner Castleberry. Motion failed 2-3 with Commissioner McDonald, Commissioner Urbanek and Mayor Bell casting the dissenting votes.

Mayor Bell made a motion to stipulate that the 5% salary increase be divided at 3% COLA and up to 2% pay for performance, seconded by Commissioner Urbanek. Motion carried 3-2 with Commissioner Castleberry and Commissioner McDonald casting the dissenting votes.

Executive Session – Mayor Bell made a motion that the Herington City Commission recess into Executive Session, pursuant to the consultation with an attorney on matters that would be deemed privileged in the attorney-client relationship exception K.S.A. 75-4319(b)(2) in order to discuss contract negotiations, to include the Governing Body, City Manager and City Attorney with the open meeting to resume at 7:45 pm. The regular meeting resumed with no action taken.

Executive Session – Mayor Bell made a motion that the Herington City Commission recess into Executive Session, pursuant to the consultation with an attorney on matters that would be deemed privileged in the attorney-client relationship exception K.S.A. 75-4319(b)(2) in order to discuss potential litigation to include the following, Governing Body, City Manager and City Attorney. With the open meeting to resume at 7:55pm, seconded by Commissioner Gares. Motion carried 5-0. The regular meeting resumed with no action taken.

Executive Session – Mayor Bell made a motion that the Herington City Commission recess into Executive Session, Pursuant to the Personnel matters of non-elected personnel exception, K.S.A. 75-4319(b)(1) in order to discuss personnel matters to include the following: Governing Body with the ability to call down the City Manager, with the open meeting to resume at 8:25, seconded by Commissioner Gares. Motion carried 4-0. The regular meeting resumed with no action taken.

City Manager Comments – He has not heard back from the contractor on when he will start demo on the properties, he is giving them until the next meeting to give us the schedule. We've had some interest from the community about purchasing city owned land, Thatcher will present more on this in October or first meeting in November. There has been a management change at the mobile home park, and the new managers have been very cooperative. We may need to consider an extension so that they may remediate the homes that the demolition process has been started on. They should be available to attend the second meeting in October. Some electrical repairs were completed today. The walking trail is nearing completion. We have a new planning commission member, Rhonda Rice.

Commissioner Comments –

Commissioner McDonald – Asked for an update on the driveway at homestead village. Staff has received a bid back for \$15,000. Staff will go out for other bids and will patch in the immediate future. Dan asked about the semi's parking in the middle of the street, wants parking in the middle of the street to cease.

Commissioner Urbanek – Asked for an update on disc golf at the lake, Rhonda and Janet are helping them work on a grant for both locations, staff is working on sales tax information. There is not a formal layout yet. Mentioned that both of our local realtors have been willing to list city owned property in the past.

Commissioner Castleberry – Left early.

Commissioner Gares – Nothing.

Mayor Bell – Commended the staff on their hard work for the walkway to the school, was happy to see that there have already been kids using it.

Adjourn – Commissioner Gares made a motion to adjourn, seconded by Mayor Bell. Motion carried 4-0.

Megan Lawrenz, City Clerk

DRAFT

**Regular Meeting
June 27, 2023
12:00 p.m.**

The Herington Planning and Zoning Commission met on the above date and time in the city commission chambers at City Hall. In attendance were Karen Soliz, Gwen Owens-Wilson (by phone), D.J. Neuberger (by phone) Janet Wade, Marcus Hawkes, James Masters, Rhonda Rice, Justin Bettles, and Chanda Wilson.

The meeting opened with the pledge of allegiance.

Marcus Hawkes called the meeting to order.

The minutes from May 23, 2023, were considered. Janet Wade made a motion to accept the agenda with staff corrections, Karen Soliz seconded, and the motion carried 5-0.

Public Forum – None

Additional Agenda Items – add 11 B for Janet Wade to report on the floodplain mapping and Main Street Program information. 12 B for City Manager, Thatcher Moddie, to report.

Karen Soliz made a motion to approve the agenda with the two items added, Janet Wade seconded, and the motion carried 5-0

Marcus opened the hearing and public forum relating to V3-2023 (301 South C Street)

No one was present from the public to address for or against in the public forum. City Inspector, James Masters, reported he had a few calls in favor of the plans to build the shed. Janet Wade asked if letters had been sent out to area residents. Mr. Masters reported, yes, letters were sent.

Justin Bettles, resident of 301 S. C Street presented his request to build a 16x16 shed beside his garage. There was previously a shed the same size that was torn down, and he wants to replace it. If approved, the variance would allow construction of the shed close to the property line. It was noted that this is in keeping with construction on the same block. There is a small breezeway that will be in between the garage and the shed which will connect the two buildings with a roof.

It was mentioned in the discussion that if one wall of the old shed had not been demolished that this same construction would have been grandfathered in.

Karen Soliz made a motion to approve the variance. Janet Wade seconded and the motion passed 5-0.

Janet Wade gave an update of the Comprehensive Plan. It is the opinion of the working group that the document doesn't meet the requirements for a comprehensive plan and that this project is too large a task for this body to complete and the group recommends hiring a consultant to help clean it up and make sure it meets the requirements. Working group requests to present their findings to the City Commission.

Karen Soliz reported on DKCO Planning and Zoning. The primary conversation was to amend 3-106 to allow residential properties to split up to 3x each and all of the divided properties can have a building without having to change the zoning.

Commissioner Comments:

Karen Soliz-None

Gwen Owens-Wilson-Asks how does a person know if they need a variance? In this case, there was an application for a building permit and the inspector informed the resident.

D.J. Neuberger-none

Janet Wade-How user friendly is our process? Wants to remind everyone that on July 14th at 9:00 AM there will be a workshop at the cemetery on preservation and restoration of gravestones.

Abilene comp plan is out now and a survey is on the website.

Marcus Hawkes- None

Karen Soliz made a motion to adjourn. D.J. Neuberger seconded and the motion carried 5-0.

DRAFT

**Planning Commission Meeting
July 25, 2023
12:00 p.m.**

The planning commission members did not have a quorum for the above date and time. Instead of a planning commission meeting, members who were present conducted a working group discussion regarding the Comprehensive plan.

Chanda Wilson, Deputy City Clerk

DRAFT

**Planning Commission Meeting
August 22, 2023
12:00 p.m.**

The planning commission members did not have a quorum for the above date and time. Instead of a planning commission meeting, members who were present conducted a working group discussion regarding the Comprehensive plan.

Chanda Wilson, Deputy City Clerk

DRAFT

MINUTES OF CVB WORK SESSION 230802

Wednesday, August 2, 2023

City Office

6:00 P.M.

1.0 OPENING OF MEETING

Call Meeting to Order

Meeting was called to order at 6:04pm.

Board members in attendance were Cynthia Naylor, Marcus Hawkes, Amy Thibodeau, Janet Wade, Rhonda Rice, & Jacki Thome. Also present was City Manager Thatcher Moddie.

2.0 TREASURER'S REPORT

No report presented

3.0 MINUTES

No minutes presented

4.0 OLD BUSINESS

Mini Grant Application-Should include Vendors, number of vendor spaces, event revenue, and projected revenue

EV MOU-The city manager will present the MOU to the commission. CVB would like to see the lease.

Trail sign-The city manager has been in contact with KDWP. KDWP does not want the trail sign because they may want to remove it in 2 years upon the completion of the trail. The Community Foundation who awarded CVB the grant for the sign will not penalize the CVB for not using the funds for the requested project. It is possible for the funds to be used for something else or held until the trail is completed. Thatcher will present to the commission for their decision on the sign. He will not recommend that the CVB places the trail sign at this time.

Meeting was adjourned at 7:04pm.

**HERINGTON RECREATION COMMISSION
MINUTES
8/21/2023**

The August meeting for the Herington Recreation Commission was to be held Monday August 21st at 5:45 p.m. at the Herington Recreation Commission Office. Meeting was presided by board President Josh Lawrenz. Other board members in attendance were Toby Osburn, Shelly Langhofer and Dwane Griffith. Guests of the board that were present: Kyle Lorson and Tammie Roe.

ADOPT THE AGENDA

Dwane Griffith moved and Toby Osburn seconded the motion to adopt the agenda. The motion passed 4-0.

AMENDMENTS AND APPROVAL OF THE MINUTES FROM July

Toby moved and Dwane Griffiths seconded the motion to approve the July meeting minutes. The motion passed 4-0

APPROVAL OF BILLS for August

Dwane Griffiths moved and Shelly Langhofer seconded the motion to approve the bills for the month of August. The motion passed 4-0.

AMENDMENTS AND APPROVAL OF THE FINANCIAL REPORT

Toby Osburn moved and Dwane Griffiths seconded the motion to approve the financial report. The motion passed 4-0.

PUBLIC FORUM

During Public forum we held the Budget Hearing for the proposed budget for the new year. No community members attended and there was no discussion. The proposed budget was approved by the board and all necessary paperwork was signed and faxed to the County Clerk.

OLD BUSINESS

During old business the money that has been budgeted for the new field project was discussed. Kyle was to look for bids on the project to be discussed at next month's meeting.

NEW BUSINESS

In new business Kyle asked the board for their opinions on how to manage non rec activities on our facilities. If we need to create a contract, set a fee or need to identify specific rules for use. All in all, there was some discussion but no decision was made. Operating on a case by case basis at the time being.

DIRECTORS REPORT

Discussed the upcoming flag football season. Also will look at bids for a new leg press.

OTHER

None

ADJOURNMENT

Toby Osburn moved to adjourn the August Meeting, Dwane Griffiths seconded the motion. Motion passed 4-0.



Advisory Board Application

OFFICE USE:	
Term Length	<u>unexpired term</u>
Appointed Date	<u>10/3/2023</u>
Expiration Date	<u>12/31/2025</u>

The City of Herington is committed to citizen involvement. A significant portion of that commitment involves our area residents' participation on advisory boards. We have found that the recommendations advisory boards present to the City Commission are invaluable in the decision making process. This questionnaire is designed to assist the City Commission in filling advisory board vacancies.

Advisory Board of interest to you Planning Commission

Name: Rhonda Rice Address: 801 W Walnut

Phone Number: 541 912-2317 Email Address: rhonda.rice61@gmail.com

➤ **Why do you want to become a member of an Advisory Board?**

I'm civic minded and have been a public servant for more than 30 years. I recently retired and moved with my family to Herington. I would like to continue my public service by volunteering my time and energy into our local town. I think Herington has the potential for economic revival and growth and I would like to be a part of that growth.

I would like to better acquaint myself on Herington's Mission and Vision statements and town goals and understand the history of Herington's economic and cultural factors. I'm very interested in the new Comprehensive Plan, Herington Tomorrow, and would like to be a part of the next 20 year vision for our town.

➤ **If you were to suggest goals to accomplish in the coming year for the current Advisory Board for which you are interested, what would they be?**

First it is important to understand the current goals set by the City Commission and Planning Commission before proposing goals. It's also important to live in a town a reasonable amount of time to understand the dynamics, limitations, and expectations of that town.

What does the populace of Herington want for their town? Economic viability and livability are normally at the top of the list. Being a very new member of the community, I would like to be a part of setting the next 20 year vision, goals, and outcomes for Herington. by creating the 2021-2042 Comprehensive Plan. Another important cornerstone for Herington is the establishment of clear and understandable codes that guide the town's growth and liveability. I want to participate in this work.

➤ **Describe any past experiences you might have that would enhance the performance of this board.**

I have seven years experience as a senior management analyst for the City of Springfield, Oregon, Public Works Department. This position reports directly to the director and I was required to be involved in many projects; to include acquiring knowledge on how cities develop and renew comprehensive planning, expansion planning, utilities maintenance and development, and how annual budgets are built around major funding of projects and daily operations.

I have four years experience with the Columbus Consolidated Government, Columbus, Georgia as a budget analyst, Finance and a division manager of Solid Waste and Recycling Collections. I acquired knowledge in division management of a collection system and budgeting for many different city divisions.

Thank you for your interest in the City of Herington Advisory Boards system. Please feel free to contact the City Manager or City Clerk at 785-258-2271 with questions regarding the Advisory Board of interest.

**KANSAS MUNICIPAL ENERGY AGENCY
GENERATING CAPACITY & POWER SALES CONTRACT**

This CONTRACT, entered as of the ____ day of _____, 2023 (the “**Effective Date**”), is between KANSAS MUNICIPAL ENERGY AGENCY (the “**Agency**”), a municipal energy agency organized and existing under the laws of the State, including particularly the Act, and the CITY OF HERINGTON, KANSAS, a municipal corporation organized and existing under the laws of the State (the “**Participant**”). Capitalized terms used without definition in the following recitals have the meanings ascribed thereto in Article 1.

WHEREAS, Participant owns the Participant System and is a Member in good standing in the Agency; and

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

WHEREAS, the Agency 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, the Agency 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, the Agency is authorized and empowered under the Act to borrow money by the issuance of revenue bonds to provide sufficient funds to purchase and install Generating Facilities to provide a secure and adequate, economical and reliable supply of Electricity for sale to the Participant in the manner prescribed by the Act; and

WHEREAS the Agency expects to issue revenue bonds relating to an electric power generation standby facility consisting of one enclosed Caterpillar C175-16 Tier 4 Final diesel generator set inclusive any and all related general intangibles, replacements, repairs, additions, attachments, accessories and accessions to be located in Herington, Kansas; and

WHEREAS, as a component of its plans to secure an adequate, economical and reliable supply of electric power and energy for the Participant System’s requirements, the Agency and the Participant have determined that the Agency will sell to the Participant, and the Participant will purchase from the Agency, Electricity on the terms and conditions set forth herein in order to meet a portion of Participant’s power and energy requirements for the Participant System; and

WHEREAS, Participant shall be responsible for all costs associated with the purchase, installation, ownership, operation and maintenance of the Generating Facilities, and all costs associated with the Herington Generation Center.

WHEREAS, in order to enable the Agency to issue its revenue bonds to pay the cost of acquiring and installing the Generating Facilities, it is necessary for Agency to enter into a binding contract with Participant and to pledge the contract, including the payments required to be made under such contract, as security for the payment of such bonds;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

ARTICLE 1. Definitions

As used herein and in any exhibits attached hereto, the following terms shall have the meanings hereinafter given. Except where the context otherwise requires, definitions importing the singular number shall include the plural number and vice versa:

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

“Agency” shall have the meaning specified in the preamble to this Contract.

“Annual Project Budget” shall mean, with respect to a Contract Year, the budget of the Agency prepared in accordance with *Article 8* hereof with respect to the Generating Facilities and which itemizes estimated Monthly Power Costs for such Contract Year or, in the case of an amended Annual Project Budget, for the remainder of such Contract Year.

“Bond Indenture” shall mean the Trust Indenture between the Agency and the trustee named therein relating to the issuance of the Agency’s Power Project Revenue Bonds, City of Herington Energy Project, to finance the Generating Facilities, as from time to time amended or supplemented by supplemental indentures in accordance with the terms thereof.

“Bonds” shall mean bonds, notes or other evidences of indebtedness from time to time issued by the Agency pursuant to the Bond Indenture to finance or refinance any cost, expense or liability paid or incurred or to be paid or incurred by the Agency in connection with the financing and acquisition of the Generating Facilities or otherwise paid or incurred or to be paid or incurred by the Agency in connection with the performance of its obligations under this Contract, including any refinancing bonds.

“Capacity Contract” or **“Contract”** shall mean this Generating Capacity & Power Sales Contract, as amended from time to time, providing for the purchase, installation, ownership, and maintenance of the Generating Facilities and the sale of Electricity from the Generating Facilities by the Agency to the Participant.

“Consulting Engineer” shall mean engineers or engineering firms of national reputation having demonstrated expertise in the field of electric power generation, transmission, power supply, electric utility operations, rates and feasibility.

“Contract Year” shall mean the period from January 1 of any year through December 31 of the same year, provided, however, that the first Contract Year shall begin on the effective date of this Contract and shall end on December 31 of the same year.

“Debt Service” shall mean, with respect to any period, the aggregate of the amounts required by the Bond Indenture to be paid or deposited during said period into any fund or account created by the Bond Indenture for the purpose of securing the payment of the principal (including sinking fund installments) of, premium, if any, and interest on all Bonds from time to time outstanding as the same shall become due.

“Effective Date” means the date set forth in the preamble to this Contract.

“Electricity” means electric energy of the character commonly known as standard three-phase

alternating current, with a nominal frequency of sixty (60) Hertz, which electric energy is generated from the Generating Facilities and measured in kilowatt-hours or megawatt-hours, and the accredited capacity of such Generating Facilities recognized by the Southwest Power Pool.

“Environmental Law” shall mean any United States federal, state, or local statute, rule, regulation, order, code, Permit, directive or ordinance and any binding judicial or administrative interpretation or requirement pertaining to the regulation or protection of employee health or safety, public health or safety, or the indoor or outdoor environment; the conservation, management, development, control or use of land, natural resources, or wildlife; the protection or use of surface water or ground water; the management, manufacture, possession, presence, use, generation, treatment, storage, disposal, transportation, or handling of, or exposure to any Hazardous Material; or pollution (including release of any hazardous substance to air, land, surface water and ground water), including the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments, and Reauthorization Act of 1986, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act the Occupational Safety and Health Act, and so-called “Superlien” law, all as now or hereafter amended or supplemented, and any regulations promulgated thereunder, and any other similar federal, state, or local statutes, rules and regulations.

“Equipment Seller” shall mean Foley Power Solutions or such other entity as may be selected by the Agency.

“Force Majeure” shall mean any cause beyond the control of the party affected, including, but not limited to, failure of facilities, flood, tsunami, earthquake, storm, fire, war, riot, lightning, civil disturbance, labor disturbance, sabotage, and restraint by court order or public authority, which, by exercise of due foresight, such party could not reasonably have been expected to avoid and which, by exercise of due diligence, it shall be unable to overcome, provided, however, that Force Majeure shall not be deemed to include any inability resulting from the gross negligence or willful misconduct of the party claiming such inability, and provided, further, that Force Majeure shall not in any way lessen or otherwise excuse any payment obligations under this Contract.

“Generating Facilities” shall mean a six-megawatt electric power generation standby facility consisting of: (a) one enclosed Caterpillar C 175-16 Tier 4 Final diesel generator set inclusive any and all related general intangibles, replacements, repairs, additions, attachments, accessories and accessions located at the Site; and (b) any ancillary equipment and facilities which the Agency acquires and installs (or causes to be installed) to provide scheduling and delivery service to the Participant.

“Governmental Authority” shall mean any United States federal, state, local, or foreign governmental department, commission, board, bureau, authority, agency, court, instrumentality, or judicial or regulatory body or entity.

“Hazardous Materials” shall mean any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyl’s (“PCBs”); any chemicals, materials or substances that are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under applicable law; or any other chemical, material, substance or waste declared to be hazardous, toxic or polluting material by any Governmental Authority, exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority.

“Herington Generation Center” shall mean the Generating Facilities, land and other appurtenances thereto located in Herington, Kansas.

“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, the Agency and the Participant will select an appropriate replacement source for the prime rate.

“Members” shall mean all municipalities, including the Participant, that have become members of the Agency, all being municipal corporations which are (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.

“Month” shall mean a calendar month.

“Monthly Power Costs” shall mean, with respect to each Month of each Contract Year, all costs attributable to the Herington Generation Center, to the extent not paid from the proceeds of Bonds, which are paid or incurred by the Agency during such Month resulting from the ownership, delivery, possession (physical or constructive), operation, maintenance and repair, renewals, replacements, additions, improvements, betterments and modifications to, the Herington Generation Center, including without limitation, the following items of cost:

(a) all scheduled payments contemplated in or required by the Bond Indenture to be paid or deposited during such month into any fund or account established by the Bond Indenture for the payment of Debt Service;

(b) the amount required under the Bond Indenture to be paid or deposited during such Month into any fund or account established by the Bond Indenture, or in connection with Bonds issued to finance any part of the Generating Facilities (other than funds and accounts mentioned in clause (a) above), including a 10% debt service coverage factor and any other amounts required to be paid or deposited by reason of the transfer of moneys from such funds or accounts to the funds or accounts mentioned in clause (a) above;

(c) all energy related costs including fuel and the variable portion of operation and maintenance expenses, and all other costs which vary with the amount of Electricity produced by the agency for delivery to the Participant;

(d) all costs of operating and maintaining the Generating Facilities and of producing and delivering to the Point of Delivery Electricity therefrom during such Month for working capital, engineering expenses, legal and financial advisory expenses; insurance premiums, and taxes or payments in lieu thereof, but excluding depreciation) not included in the costs specified in the other items of this definition;

(e) all costs of establishing and maintaining a deposit account with a 3rd party banking institute into which all Revenues related to the Herington Generation Center shall be deposited (it being acknowledged that Participant be responsible for such costs, or the portion thereof allocated by the Agency to Participant for the Herington Generation Center), until all obligations associated with the Bond Indenture are satisfied in full;

(f) all amounts (net of any insurance proceeds received in good and immediately available funds) which the Agency is required to pay for the prevention or correction of any loss or damage to the Generating Facilities, or for renewals, replacements, repairs, additions, improvements, betterments and modifications which are necessary to keep any portion of the Generating Facilities in good operating condition or to prevent a loss of revenues therefrom;

(g) all costs and expenses, including indemnity payments (net of any insurance proceeds received in good and immediately available funds) relating to injury and damage claims arising out of the Generating Facilities and required to be paid by the Agency;

(h) any additional amount allocable to Bonds issued to finance any part of the Generating Facilities which must be realized by the Agency during such Month in order to meet the requirement of any rate covenant of the Bond Indenture with regard to Debt Service coverage with respect to such Bonds or which the Agency deems advisable in the marketing of its Bonds.

(i) an administrative charge that shall be based on an amount established by the Agency from time to time based on the Agency's Total Annual Budget; and

(j) all other costs and expenses not otherwise specified herein which are directly attributable and assignable to the Agency's performance of its obligations hereunder or under the Bond Indenture including, but not limited to, facilities charges, telemetering charges, surcharges payable by the Agency, any tax which is imposed upon the Agency by any lawful authority, for the production, transmission or sale of Electricity and other services provided by the Agency to the Participant under this Contract, or the payment and performance by the Agency under the Bond Indenture and late payment charges hereunder or under such Bond Indenture.

"NERC" shall mean the North-American Electric Reliability Corporation.

"Operation Commencement Date" shall mean the date on which the Generating Facilities have been substantially completed and tested and are ready to commence operations for the delivery of Electricity under this Contract.

"Participant" shall mean the City of Herington, Kansas.

"Participant System" shall mean the electric utility system owned, operated and maintained by the Participant, including all additions and modifications thereto.

"Permit" shall mean any permit, license, consent, approval or certificate that is required for the operation or maintenance of the Generating Facilities or the performance of any service hereunder and includes Permits required under Environmental Laws.

"Point of Delivery" shall mean the point of interconnection between the Herington Generation Center and the Participant's distribution substation and any future points at which the Participant receives Electricity from the Herington Generation Center under this Contract.

"Prudent Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry 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. Prudent 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.

“Revenues” shall mean the gross revenues of Participant’s electric utility system, which are pledged to Participant’s payment obligations under this Contract.

“Site” shall mean the land on which the Herington Generation Center is located, as further described in the Site Lease.

“Site Costs” shall mean the costs for the following; (a) employee salaries, benefits, and other compensation costs; (b) equipment, rental equipment, material, supplies, consumables, spare parts, replacement components, tools, office equipment and supplies, and utilities used at the Herington Generation Center Site; (c) Permits and insurance; (d) special training of Site personnel conducted on or off-Site and associated travel and living expenses for such training; (e) third party advisors, consultants, and contractors providing work in support of services that cannot reasonably be performed by Site personnel; and (f) any other activity performed for the benefit of the Herington Generation Center Site.

“Site Lease” shall mean the land lease by and between Agency and Participant for the land upon which the Herington Generation Center is located.

“SPP” shall mean the Southwest Power Pool.

“State” shall mean the State of Kansas.

“Trustee” shall mean the trustee named in the Bond Indenture.

ARTICLE 2. Term

This Contract shall become effective on the Effective Date and shall continue in force as long as any obligations under the Bond Indenture remains outstanding, *provided, further* the term of this Contract may not exceed forty (40) years; and *provided, further*, this Contract shall be subject to termination if the Agency fails to sell and deliver the Bonds on or before September 1, 2024, subject to the following parameters. It is the intention of the Parties that Participant will take ownership of the Generating Facilities upon fulfillment of all financial obligations under this Contract and the Bond Indenture.

- Total principal amount shall not exceed \$4,500,000;
- True interest cost shall not exceed 6.25% per annum, and
- The term of the Bonds shall not be less than 20 years, or as otherwise agreed to in writing by the Participant

It is the intention of the Parties that Participant will take ownership of the Generating Facilities upon fulfillment of all financial obligations under this Contract and the Bond Indenture.

ARTICLE 3. Sale and Purchase of Electricity from Generating Facilities

(a) *Sale of Electricity.* Subject to, and in accordance with, the terms of this Contract, the Agency shall make available and sell, and the Participant hereby agrees to purchase and receive from the Agency, all Electricity produced at the Herington Generation Center, with deliveries being able to be commenced on the Operation Commencement Date. The Participant shall, in accordance with and subject to the provisions of *Article 6* hereof, pay the Agency the Monthly Power Costs.

(b) *Equipment Maintenance; Emergencies.* In case of emergencies or to install equipment, make repairs, replacements or inspections, or perform any other maintenance work, on the Generating Facilities or transmission distribution facilities and related equipment, the Agency may temporarily interrupt or reduce deliveries of Electricity if the Agency determines that such interruption or reduction is necessary. After informing the Participant regarding any such planned interruption or reduction, giving the reason therefor and stating the probable duration thereof, the Agency will attempt to schedule such interruption or reduction at a time which will cause the least practicable interference with the operations of the Participant. Any such interruption or reduction shall not affect in any way the Participant's obligations to pay Monthly Power Costs under this Contract.

ARTICLE 4. Electric Characteristics, Points of Delivery and Measurement

Electricity to be furnished hereunder shall be three phase, sixty hertz alternating current. The delivery voltage and special conditions of service shall be as follows:

(a) The delivery voltage shall be determined and agreed to by the Parties consistent with Participant's system voltage.

(b) The Participant System will be operated in accordance with Prudent Utility Practice.

ARTICLE 5. Operation and Maintenance

Operations and Maintenance responsibilities at the Generating Facilities shall be as follows:

(a) Responsibilities of the Agency:

- (i) Agency shall work with Participant to develop an annual operating budget that is consistent with the needs of Participant as well as the needs of Agency. Said budget shall be completed in conjunction with the Annual Project Budget process as provided for in *Article 8*.
- (ii) To the extent not previously provided to Participant, Agency shall provide to Participant as soon as reasonably practicable all information in Agency's possession relevant to Participant's performance of its obligations hereunder, including, without limitation, copies of all agreements relating to the Herington Generation Center and any modifications thereto, copies of Permits obtained by Agency, an initial inventory of spare parts and supplies, all O&M Manuals, and any associated informational and warranty documents provided by the vendors or contractors. Agency shall provide support to Participant, if requested, for operation and maintenance issues as they arise.
- (iii) Agency will work with Participant and other local entities to develop operating procedures for the Herington Generation Center including Site safety rules and workplace safety rules.
- (iv) Agency shall be responsible to obtain from the appropriate Governmental Authorities all Permits for the ownership, operation and maintenance of the Generating Facilities, and shall obtain and maintain all such Permits in the Agency's name. The Agency shall make any and all applicable: (1) functional registrations as required by NERC and (2) filings with Governmental Authorities.

- (v) Agency may start and stop the Herington Generation Center, or cause it to be started and stopped, from a remote location, provided that the Participant shall have the right to start or stop the Generating Facilities in an emergency.
- (b) Responsibilities of the Participant:
- (i) Participant shall be responsible for the daily operations and business associated with the operation and maintenance of Herington Generation Center in accordance with this Contract. Participant, at all times during the operations and maintenance of the Generating Facilities, shall employ Prudent Utility Practices. Unless replaced in accordance with the requirements of this Contract, Participant shall not remove any parts that are essential to the operation of the Herington Generation Center or the removal of which could reasonably be expected to adversely affect the value, utility and remaining useful life that the Herington Generation Center would have had without the removal of such parts. The employees of Participant shall be properly trained (and where required by law, registered and licensed) in the operation and maintenance duties to which they are assigned at Herington Generation Center. Participant shall insure that any and all third-party advisors, consultants, and contractors providing work in support of operations and maintenance at the Herington Generation Center also comply with the foregoing.
 - (ii) Participant shall be responsible to make expenditures and pay for all Site Costs associated with the operation and maintenance of the Herington Generation Center. Participant shall keep a detailed record of all costs and shall forward such record to the Agency upon request. This report will be produced and submitted in a mutually agreed upon format.
 - (iii) Participant shall provide to Agency and its respective agents or designees, upon request, unencumbered access to the Herington Generation Center bearing in mind that Agency and its respective agents or designees must follow all Site safety and workplace safety rules as set forth in the operating procedures.
 - (iv) Participant shall be responsible for all personnel matters associated with the operations and maintenance of the Herington Generation Center including, but not limited to: selection of staff, working hours, rate of compensation, benefits, and all others matters relating to the employment of personnel at the Herington Generation Center.
 - (v) Participant shall deliver Herington Generation Center data recorded, prepared, or maintained by Participant to Agency: (1) to assist Agency in complying with requirements for Governmental Authorities, Permits, and service or other agreements; or (2) upon any request by Agency.
 - (vi) Participant may not dispose of any assets of the Herington Generation Center by selling, leasing, pledging, mortgaging, encumbering, conveying, or making any license or exchange or other transfer or disposition of the Herington Generation Center, the Site or any property of the Agency.

ARTICLE 6. Cost Responsibility

(a) It is the Parties' intention that Participant will be responsible for all the costs related to the Herington Generation Center, including all amounts due under the Bond Indenture. Participant's obligation to pay for all such costs shall be effective upon the Effective Date and continue until all amounts due hereunder and thereunder are paid in full notwithstanding the occurrence of any event, the availability of the Generating Facilities, or the taking of any action permitted by this Contract. The provisions that follow are intended to implement, but not to narrow, this intention.

(b) The Participant shall pay to the Agency, or shall pay to the Bond trustee on behalf of the Agency, on a monthly basis in accordance with *Article 7* an amount equal to the Monthly Power Costs. The parties agree that the amounts to be paid to or on behalf of the Agency under this Contract are intended to provide revenues for the Agency sufficient to cover all Monthly Power Costs; and that the sole function of the Agency is to serve its Members, including the Participant, which might contract with the Agency in accordance with law and for no other purpose. Consequently, it is agreed that the rates determined pursuant to this Contract are to allow full recovery by the Agency of those costs and expenses included in the definition of Monthly Power Costs.

(c) The obligation of the Participant to pay Monthly Power Costs under this Contract to the Agency, whether or not reduced to judgment, shall be absolute, unconditional and non-cancellable (whether or not the Herington Generation Center is fully constructed, operating or operable and whether or not, once operating, its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part), shall not be subject to any defense or reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon delivery of Electricity, or be otherwise conditioned upon the performance by the Agency or any other party, whether under this Contract or any other agreement or instrument; provided, however, that nothing contained herein shall be construed to prevent or restrict the Participant from asserting any remedies which it may have against the Agency under this Contract pursuant to *Article 16*. The Participant and the Agency hereby acknowledge and agree that the Bonds are being issued by the Agency and sold to investors with the understanding and expectation that Monthly Power Costs shall not be diminished or abated for any reason and that the payment of the Monthly Power Costs by the Participant are necessary to assure full and timely payments under the Bonds.

(d) The Participant agrees to cooperate with the Agency to ensure that no administrative or regulatory jurisdiction or order will result in rates, fees or charges under this Contract which are not sufficient to allow the Agency to pay, when due, its indebtedness related to the Generating Facilities, or to otherwise meet the requirements of the Bonds entered into by the Agency to finance any part of the Generating Facilities, but nothing herein is intended to lessen or detract from any rights and obligations of the parties hereto.

ARTICLE 7. Billing and Payments

(a) The Agency shall establish a schedule of billing which is coordinated with the payments required to be made under the Bond Indenture. The Participant shall pay all amounts due and payable hereunder to the following recipients at the addresses or accounts set forth on the invoice: (i) as long as any Bonds are outstanding, to the Trustee to be designated by the Agency upon issuance of the Bonds, and (ii) if no Bonds are outstanding, to the Agency.

(b) All payments shall be made within five (5) days after the bill is sent electronically and is received by the Participant; provided, however, that, if said 5th day is a Sunday or legal holiday in the State, the next following business day shall be the day on which such payment shall be due. Payments shall be

made by via a bank wire transfer or ACH debit to the Agency's bank account in accordance with the instructions provided in writing by the Agency.

(c) 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.

(d) To the extent any portion of a monthly invoice is based on the Annual Project Budget or other estimates or projections, the Agency shall true up the related charges as soon as it has the necessary information regarding actual costs. Any overpayments by the Participant shall be credited on the next invoice provided to the Participant, and any underpayments shall be added to the next invoice provided to the Participant.

(e) If the Participant 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 the Agency. When any dispute regarding payment is resolved, any refunds due shall be paid (or credited) within ten (10) days thereafter, together with interest at the Late Interest Rate, based upon the actual number of days elapsed from the date paid until the date refunded or offset.

ARTICLE 8. Annual Project Budget

(a) The Agency shall prepare or cause to be prepared, as a component of its overall annual budget, and deliver to the Participant (1) by June 30 of each Contract Year, a "best estimate" by the Agency of its preliminary Annual Project Budget for the succeeding Contract Year, and (2) at least thirty (30) days prior to the beginning of each Contract Year, a final Annual Project Budget. The "best estimate" and the final Annual Project Budget shall each itemize, for the subsequent Contract Year, estimates of all Monthly Power Costs.

(b) The Agency, not less than thirty (30) days prior to the beginning of such Contract Year, shall, in its sole and absolute discretion, adopt its overall annual budget, including the Annual Project Budget for such Contract Year, and the Agency shall cause copies of such Annual Project Budget to be delivered to the Participant in accordance with subsection (a) herein. The Participant shall have the right to review and have input on the Annual Project Budget.

(c) In the event that an overall annual budget of the Agency, including an Annual Project Budget for the ensuing Contract Year, has not been adopted on or before the first day of the Contract Year, the total amount budgeted for the preceding Contract Year shall be the total amount of the temporary Annual Project Budget for such purposes for the ensuing Contract Year. The temporary Annual Project Budget shall be effective only until such time as a permanent Annual Project Budget has been finally prepared and approved by the Agency as provided herein.

ARTICLE 9. Environmental Matters

(a) During the term of this Contract, Participant will assist Agency with the acquisition of data and information, and preparation and filing with the appropriate Governmental Authorities of any notices, plans, submissions, or other materials and information necessary for compliance with applicable Environmental Laws and the requirements of any Permits related to the Facility. All such environmental reports shall be submitted by, and in the name of, the Agency.

(b) Agency shall serve as the responsible party for any environmental programs, permitting

and reporting.

(c) Participant shall be responsible for following all necessary and required procedures when dealing with Hazardous Materials at the Site. Hazardous Materials will be properly acquired, stored, and disposed of in accordance with all applicable rules established by a Governmental Authority.

ARTICLE 10. Insurance

(a) At all times during the Term, Participant shall be obligated to maintain insurance to cover worker's compensation for Participant employees, and any Participant-owned vehicle(s) that may be assigned to, or come and go, to and from the Generating Facilities.

(b) The Agency shall secure and maintain insurance in an amount sufficient to cover the property and equipment assets of the Generating Facilities, including commercial general liability insurance with additional coverage of "umbrella" or excess liability insurance in excess amounts of the general liability coverage. The cost of this insurance shall be paid for by the Participant.

(c) Each Party shall furnish the other Party with certificates evidencing that the required insurance is in effect.

ARTICLE 11. Covenants of the Participant

(a) The Participant agrees that payments made by the Participant under this Contract to or on behalf of the Agency, whether or not reduced to judgment, shall be made as operating expenses from the revenues of the Participant's electric utility system (including, without limitation, the Herington Generation Center) and from other funds of such system legally available for the payment of costs and expenses of such system, and shall be in addition to, and not in substitution for, any other payments, whether on account of dues or otherwise, owed by the Participant to the Agency. The obligation of the Participant to make payments under this Contract to the Agency, whether or not reduced to judgment, shall not constitute general obligations of the Participant, and the Participant shall not be required to make such payments from any source other than the revenues and funds mentioned in the preceding sentence.

(b) The Participant agrees to establish, impose, maintain, enforce and collect rates, fees and charges for electric power and energy to its consumers which shall provide to the Participant revenues sufficient to meet its obligations to the Agency under this Contract and all other operating expenses, and to pay all obligations payable from, or constituting a charge or lien on, the gross revenues of its electric system. The Participant shall not be required to make payments under this Contract except from the revenues of the Participant's electric utility system and from other funds of such system legally available therefor. In no event shall the Participant be required to make payments under this Contract from tax revenues.

(c) Participant is, within the meaning of Section 103 of the Code and Treasury Regulations and Rulings related thereto, a duly constituted and organized, and validly existing, political subdivision existing under laws of the State and is authorized to purchase or lease with an option to purchase personal property and to sell or lease or otherwise dispose of personal property. All payments which are made hereunder will be paid out of funds which are legally available for such purpose. The use of the Herington Generation Center is essential to Participant in the discharge of its duties as a governmental body and will not be used in any manner to cause private business use.

(d) The Participant shall not sell, lease or otherwise dispose of all or substantially all of its electric system, except on ninety (90) days' prior written notice to the Agency; provided, however, nothing in this Section shall limit Participant's obligations and agreements as they relate to the Herington

Generation Center.

(e) The Participant covenants and agrees that it shall take no action, or fail to take action, the effect of which would be to prevent, hinder or delay the Agency from the timely fulfillment of its obligations under this Contract or under the Bond Indenture, including but not limited to, timely providing financial statements and annual budgets to Agency, and notifying Agency of any material adverse event.

(f) The Participant may enter into agreements to take and pay for, or take or pay for, or spot purchase, power and energy, gas, water other fuel or other services not provided hereunder, pursuant to which the Participant is obligated to make payments from revenues derived from the Participant's electric system, which payments are required to be made on a parity with, or after the payment of, the operating expenses of such system (and for purposes of clarity, the Participant shall not enter into any such agreements pursuant to which the Participant is obligated to make such payments prior to the payment of operating expenses, including the Monthly Power Costs). The Participant may issue bonds, notes or other evidences of indebtedness which, under generally accepted accounting principles, would appear as a liability on its balance sheet and which shall be payable from the net revenues derived from its electric system after the payment of the operating expenses of such system, provided, however, that the Participant shall not issue any such indebtedness pursuant to which the Participant is obligated to make such payments prior to, or on a parity with, the payment of operating expenses, including the Monthly Power Costs, contemplated under this Contract.

(g) The Participant covenants and agrees that it shall not, except upon the advice of Bond Counsel, use or permit to be used any of the Electricity acquired under this Contract in any manner or for any purpose which would adversely affect the value of this Contract as security for the payment of the Bonds and interest thereon or affect the eligibility of interest on the Bonds for exclusion from gross income for federal income tax purposes under Sections 103, 141-150 of the Internal Revenue Code of 1986, as amended. The Participant covenants that, prior to entering into any agreement whereby a person or entity (other than a normal customer) agrees to take and pay for, or to take or pay for, Electricity provided to the Participant under this Contract, the Participant shall notify the Agency of its intent to enter into such agreement. The Participant agrees that, if the Agency advises the Participant that such a violation will or might result, the Participant will not enter into such agreement.

(h) The Participant covenants and agrees that it shall (1) at all times operate the properties of its electric system and the business in connection therewith in an efficient manner and at reasonable cost, (2) maintain its electric system in good repair, working order and condition, (3) conduct audits of its electric system by an independent certified public accounting firm at least annually, and (4) from time to time, make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to its electric system and consistent with the provisions of *Article 5* above, so that, at all times, the business shall be properly and advantageously conducted. This covenant shall not be construed as requiring the Participant to expend any funds which are derived from sources other than the operation of its electric system or other legally available funds, and provided further that nothing herein shall be construed as preventing the Participant from doing so.

(i) Participant shall be responsible for providing adequate staffing who will be properly trained (and where required by law, registered and licensed) in the operation and maintenance duties to which they are assigned at Herington Generation Center.

(j) Participant shall deliver Herington Generation Center data recorded, prepared, or maintained by the Participant to the Agency: (i) to assist the Agency in complying with requirements for Governmental Authorities, Permits, and service or other agreements; or (ii) upon any request by the Agency.

ARTICLE 12. Covenants of the Agency

(a) The Agency will not sell, mortgage, encumber, lease or otherwise dispose of the Generating Facilities during the term of this Contract, except as provided in the Bond Indenture.

(b) The Agency will use its commercially reasonable efforts to ensure the Herington Generation Center shall be designed, constructed, maintained and operated in a manner that minimizes total life cycle costs to the Participant, while ensuring that the Herington Generation Center performance meets or exceeds design specifications for unit performance, heat rate, net plant output, and environmental compliance. The Agency will operate or cause the Herington Generation Center to be operated in a manner consistent with all applicable laws and regulations, including without limitation the environmental emissions limits established in the relevant operating permits, and in accordance with applicable NERC and SPP standards and directives.

(c) The Agency will provide maintenance of the Generating Facilities either through one or more agreements with the Equipment Seller or another approved method that meets the manufacturer guidelines. Notwithstanding the foregoing, Participant understands that Agency is not the manufacturer or seller of the Generating Facilities or components thereof. AGENCY MAKES NO (AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL) WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE, OR TITLE. Agency shall not be liable to Participant or any third-party for consequential, incidental, special, exemplary, or punitive damages arising out of or related to the transaction contemplated hereunder, whether an action based on contract, tort (including negligence or strict liability), or any other legal theory, including but not limited to, loss of anticipated profits, or benefits of use or loss of business, even if Agency is apprised of the likelihood of such damages occurring. The maximum extent of Agency's liability to Participant shall be the total amount of any payments made by Participant to Agency.

(d) The Agency will keep or cause to be kept the Herington Generation Center insured against loss or damage by causes customarily insured against by those operating facilities similar to the Herington Generation Center and in such amounts as are usually obtained. The Agency will also maintain or cause to be maintained insurance or reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those operating properties similar to the Herington Generation Center. The Agency's costs associated with maintaining each type of insurance will be included in the Monthly Power Costs.

(e) The Agency may sell bonds, notes or other evidence of indebtedness and may enter into other financial contracts to refinance the Generating Facilities, with the approval of Participant and the KMEA Board of Directors.

ARTICLE 13. Default

(a) The Agency may, whenever any amount due remains unpaid after the due date, take any steps available to it under applicable law to collect such amount. Further, if Participant has committed a payment default, the Agency may temporarily suspend Participant's right to receive any applicable share of SPP market revenues. Such suspension shall continue until Participant shall have cured such payment default.

(b) The Agency may, whenever any amount due remains unpaid for five (5) days after the due

date, suspend the delivery of Electricity until the amount due has been paid.

(c) The Agency may, whenever any amount due remains unpaid for one hundred and twenty (120) or more days after the due date, and after giving thirty (30) days advance notice in writing of its intention to do so, terminate the Participant's right to receive Electricity under this Contract; provided however that, if such default is remedied within the 30-day notice period, the Participant's right to receive Electricity under this Contract shall not be terminated.

(d) No such suspension under subsection (b) above or termination pursuant to subsection (c) above shall relieve the Participant from liability for payment for Electricity or other services furnished hereunder, including specifically the Monthly Power Costs.

ARTICLE 14. Other Default by the Participant

In the event of a failure of the Participant to fix, charge or collect rates or charges adequate to provide revenues sufficient to enable the Participant to pay all amounts due to the Agency under this Contract, or in the event of any default by the Participant under any other covenant, agreement or obligation of this Contract, the Agency may bring any suit, action or proceeding, at law or in equity, including mandamus, injunction and action for specific performance, as may be necessary or appropriate to enforce any covenant, agreement or obligation of this Contract against the Participant. All remedies in this Article specified are in addition to the other remedies granted to the Agency in this Contract.

ARTICLE 15. Default by the Agency

In the event of any default by the Agency under any covenant, agreement or obligation of this Contract, the Participant may bring an action for mandamus, injunction or specific performance or otherwise before any court of competent jurisdiction, as may be necessary or appropriate to enforce any such covenant, agreement or obligation of the Agency under this Contract; provided, however, that in no event shall the Participant be entitled to institute any action for, or to directly or indirectly recover, any damages from the Agency. Default by the Agency shall not relieve the Participant of its obligations to pay the Monthly Power Costs or allow any termination or rescission of this Contract.

ARTICLE 16. Right of Access

The Participant has entered into a Site Lease with the Agency for the lease of the property on which the Generating Facilities are located. In addition to the rights granted under the Site Lease, each party grants to the other party a right of access, at all reasonable times, over their respective properties and facilities as may be required to enable each to carry out its obligations as provided herein.

ARTICLE 17. Force Majeure

(a) If, for any reason of Force Majeure, either of the parties hereto shall be rendered unable, wholly or in part, to carry out obligations under this Contract, other than the obligations of the Participant to make the payments required under the terms of this Contract, 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 Force Majeure, 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. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the

demands of the opposing parties when such settlement is unfavorable to the affected party in the sole judgment of such party having the difficulty.

(b) No damages shall be recoverable from the Agency or the Participant by reason of the causes mentioned above.

(c) In the event the Agency fails to provide Electricity under this Contract, or the cessation or curtailment of, or interference with, the services hereunder is caused by Force Majeure, and the Agency is not able to supply all of the Electricity requirements of the Participant which the Agency is expected to supply under this Contract, the Agency shall use its reasonable efforts to provide all available Electricity to satisfy the requirements of the Participant. Any such failure, cessation, curtailment or interference shall not affect in any way the Participant's obligation to make the payments required under the terms of this Contract (including Monthly Power Costs) or to preserve or protect the Herington Generating Center in accordance with the requirements of this Contract.

ARTICLE 18. Assignment of Contract

(a) This Contract shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties to this Contract; provided, however, that, except for the assignment by the Agency authorized by subsection (b) of this *Article 18*, neither this Contract nor any interest herein shall be transferred or assigned by either party hereto except with the consent, in writing, of the other party hereto, which consent shall not be unreasonably withheld. No assignment or transfer of this Contract shall relieve the parties of any obligation hereunder, and such assignment or transfer shall meet the conditions for transfer set forth in *Article 11*.

(b) The Participant acknowledges and agrees that the Agency may assign and pledge, to any holder of the Bonds or any lender, trustee or similar entity designated in the Bond Indenture, all of, or any interest in, the Agency's right, title and interest in and to all payments to be made to the Agency under the provisions of this Contract, as security for the payment of the principal (including sinking fund installments) of, premium, if any, and interest on the Bonds, and may deliver possession of this Contract to such assignee and pledgee in connection therewith, and, upon such assignment and pledge, the Agency may grant to such assignee and pledgee any rights and remedies herein provided to the Agency, and thereupon any reference herein to the Agency shall be deemed with the necessary changes in detail, to include such assignee and pledgee, which shall be a third party beneficiary of the covenants and agreements of the Participant herein contained; provided, however, that nothing herein is intended to allow the Agency, in the absence of an event of default under the Bond Indenture, to turn over its operating responsibilities to any such assignee and pledgee. The Participant further acknowledges and agrees that the Agency may assign, pledge, mortgage or otherwise encumber to any holder of the Bonds or any lender, trustee or similar entity designated in the Bond Indenture, all of, or any interest in, the Agency's right, title and interest in and to the Generating Facilities.

ARTICLE 19. Records and Accounts

The Agency shall keep accurate records and accounts of its Generating Facilities and its operations. The Participant shall have the right, at any reasonable time, to examine such accounts. The Agency shall cause such accounts to be audited annually by a firm of independent certified public accountants of national reputation, and shall supply copies of such audits to the Participant.

ARTICLE 20. Information

The Agency and the Participant will promptly furnish to each other such information as may be

reasonably requested from time to time in order to carry out more effectively the intent and purpose of this Contract, or as may be reasonably necessary and convenient in the conduct of the operations of the party requesting such information. Without limiting the generality of the foregoing, the Participant shall, upon request, furnish to the Agency all such information, certificates, engineering reports, feasibility reports, information relating to load forecasts and generation and transmission expansion plans, financial statements, opinions of counsel (including the opinion required by *Article 22* hereof), official statements and other documents as shall be reasonably necessary in connection with Generating Facilities financings of the Agency, including, without limitation, any information necessary to comply with the securities laws of the United States of America.

ARTICLE 21. Amendment

Except as expressly provided herein, neither this Contract nor any terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing executed by each party to this Contract. Furthermore, the Board of Directors of the Agency shall not consent or agree to, or permit any rescission of, or amendment to, or otherwise take any action under or in connection with, this Contract which will reduce the payments required hereunder or which will in any manner materially impair or materially adversely affect the rights of the Agency hereunder or the rights or security of the holder(s) of any Bonds under the Bond Indenture. The Trustee, on behalf of the owners of the Bonds, shall be deemed as a third-party beneficiary of the preceding sentence. The extension of the term of this Contract shall not constitute an amendment prohibited by the foregoing.

ARTICLE 22. Opinion of Counsel

Upon the execution and delivery of this Contract, the Participant shall furnish the Agency with an opinion of an attorney or firm of attorneys to the effects that:

- (a) The Participant has been created and is validly existing pursuant to the Constitution and statutes of the State.
- (b) The Participant has full legal right and authority to enter into this Contract and to carry out its obligations hereunder.
- (c) The City Commission or other governing body of the Participant has duly approved this Contract and its execution and delivery on behalf of the Participant by an ordinance duly and lawfully adopted at a meeting duly called and held at which a quorum was present and acting throughout and, if applicable, such meeting was called pursuant to necessary public notice when required.
- (d) This Contract has been duly authorized, executed and delivered by the appropriate officers of the Participant; and, assuming that the Agency has all the requisite power and authority to execute and deliver, and has duly authorized, executed and delivered, this Contract, this Contract constitutes the legal, valid and binding obligation of the Participant, enforceable in accordance with its terms, subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally. No opinion need be rendered as to the availability of any particular remedy.
- (e) The execution and delivery of this Contract by the Participant, the performance by the Participant of its obligations hereunder, and the consummation of the transactions contemplated herein do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or administrative agency having jurisdiction over the Participant or its property, or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any

existing bond resolution, indenture, mortgage, deed of trust or other agreement to which the Participant is a party or by which it or its property is bound.

(f) All approvals, consents or authorizations of, or registrations or filings with, any governmental or public agency, authority or person required on the part of the Participant in connection with the execution, delivery and performance of this Contract have been obtained or made.

(g) To the knowledge of such attorney or firm of attorneys, after due inquiry, there is no litigation or other proceeding pending or threatened in any court, or before any governmental agency, public body or other tribunal of competent jurisdiction (either State or federal) questioning the creation, organization or existence of the Participant or the validity, legality or enforceability of this Contract.

ARTICLE 23. Relationship to, and Compliance with, Other Instruments

It is recognized by the parties hereto that, in undertaking the financing and acquisition of the Generating Facilities, the Agency must comply with the requirements of the Bonds and Bond Indenture and of all licenses, permits and regulatory approvals necessary for such financing and acquisition, and it is therefore agreed that this Contract is made subject to the terms and provisions of the Bonds and Bond Indenture of the Agency and all such licenses, permits and regulatory approvals, provided, however, the foregoing shall not be interpreted to relieve the Participant of its obligations to pay the Monthly Power Costs.

ARTICLE 24. Notices

Any notice, demand or request, required or authorized by this Contract, shall be properly delivered if mailed, postage prepaid, or sent by facsimile or electronically with confirmation of receipt by the other party:

(a) To the Agency at:

Kansas Municipal Energy Agency
6300 West 95th Street
Overland Park, Kansas 66212-1431
Attention: General Manager
Telefax: (913) 660-0234
E-Mail: mahlberg@kmea.com

(b) To the Participant at:

City of Herington, Kansas
17 N. Broadway
Herington, Kansas 67449
Attention: City Administrator or City Attorney
Telephone: (785) 258-2271

The foregoing addresses may be changed by similar notice at any time.

ARTICLE 25. Waivers

(a) Any waiver at any time by either party hereto of its rights with respect to a default or any matter arising in connection with this Contract shall not be deemed to be a waiver with respect to any

subsequent default or matter.

(b) The failure of either party hereto to enforce, at any time, any of the provisions of this Contract, or to require at any time performance by the other party hereto of any of the provisions hereof, shall not be construed to be a waiver of such provisions or in any way to affect the validity of this Contract, or the right of such party thereafter to enforce each and every provision hereof.

ARTICLE 26. Severability; Interpretation

In the event that any of the terms, covenants or conditions of this Contract, or the application of any such term, covenant or condition, shall be held invalid as to any person(s) or circumstance(s) by any court having Jurisdiction the remainder of this Contract and the application of its terms, covenants or conditions to such person(s) or circumstance(s) shall not be affected thereby.

Whenever terms such as “include” or “including” are used in this Contract or any related agreement, they mean “include” or “including,” as the case may be, without limiting the generality of any description or word preceding such term. Unless otherwise expressly specified: (a) the words “herein,” “hereof” and “hereunder” and words of similar import, when used in this Contract or any related agreement, shall refer to this Contract or such related agreement as a whole and not to any particular provision thereof and (b) references in this Contract or any related agreement to Articles, Sections, Exhibits and Schedules are references to Articles, Sections, Exhibits and Schedules of this Contract or such related agreement, as applicable.

ARTICLE 27. Applicable Law

This Contract shall be governed by, and be construed in accordance with, the laws of the State.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their proper officers, respectively, being thereunto duly authorized, and their respective seals to be hereto affixed, as of the day, month and year first above written.

KANSAS MUNICIPAL ENERGY AGENCY

(SEAL)

By _____
Paul Mahlberg, General Manager

ATTEST:

By _____
Mike Muirhead, Secretary

CITY OF HERINGTON, KANSAS

(Seal)

By _____
Robin Bell, Mayor

ATTEST:

By _____
Megan Lawrenz, City Clerk

DRAFT



CITY WIDE CLEAN UP

CURBSIDE PICK UP

Clean-Up Guidelines: M&K Trash Service is asking residents to place their trash **BY THE CURB BY SUNDAY, OCTOBER 15, 2023 at 8:00 p.m.** Please do not put items out for pick-up more than 48-hours in advance. Items will be picked-up as M&K Trash Service makes their way around town.

The following materials **WILL BE PICKED UP:**

Household furniture, mattresses, boxsprings, carpet or pad cut to 3.5' in width rolled and tied, toilets, sinks, showers, microwaves, computers, TV's, windows (max 36"x36") and general household trash bagged and weighing no more than 40lbs.

The following materials **WILL NOT BE PICKED UP:**

Materials from outside of Herington City limits, hazardous waste including oil, batteries, paint and chemicals, construction material including iron, concrete, bricks and rock, tires, metal bicycles, lawnmowers, brush, trees, leaves, grass and dirt.

Following these guidelines helps to ensure that we can continue this clean-up opportunity for years to come!