



 If you need this information in another format or require a reasonable accommodation to attend this meeting, contact the City's ADA Coordinator at 785-229-3635. Please provide advance notice of at least two (2) working days. TTY users please call 711.

**101 S. Hickory
PO Box 60
Ottawa, KS 66067-0060**
Phone: 785-229-3600
Fax: 785-229-3639
www.ottawaks.gov
www.facebook.com/ottawaks

TO: Mayor and City Commissioners
RE: Study Session Meeting Agenda
FROM: Richard U. Nienstedt, City Manager

A Study Session is scheduled for **December 14, 2015 at 4:00 pm** in the conference room on the first floor of City Hall, 101 S. Hickory. The following items will be presented:

I. Public Comments

II. Items to be Placed on the Regular City Commission Agenda

- a. Minutes from the November 30, 2015 Study Session *Pgs. 3-5*
- b. Request for Approval of Application for Cereal Malt Beverage License for Price Chopper - Hailey Luke *Pg. 6*
- c. Request for Approval of Wind Farm Energy Purchase - Dennis Tharp *Pgs. 7-20*

III. Items for Presentation and Discussion

- a. Community Read Project and Wish List Fundraiser - Terry Chartier
- b. Urban Growth Agreement - Richard U. Nienstedt and Blaine Finch *Pgs. 21-27*
- c. Snow Removal Policy Review - Michael Haeffele
- d. City Manager's Report
- e. Commissioner's Reports
- f. Mayor's Report

IV. Announcements

- December 16, 2015 **Regular Meeting, 9:30 am, City Hall**
- December 21, 2015 **Study Session, 4:00 pm, City Hall**
- December 25, 2015 **Christmas Holiday, City Offices CLOSED**
- December 28, 2015 **Study Session, 4:00 pm, City Hall**

V. Adjourn

Motion: _____ Second: _____ Time: _____

52 Tips for Successful Public Service by E.A. Mosher

#1-Learn all you can about your city, its history, its operations, its financing. Do your homework. Know your City ordinances. Take a look at the comprehensive plan.

2015 Priorities

Auditorium • Income Stream for Economic Development • Parks • Downtown • Retail Growth

Pkt Pg #1

VI. Items Already Placed

- a. Request for Approval of Resolution for Planned Capital Lease Purchase of Equipment for the Public Works Department

**Study Session Minutes
Ottawa, Kansas
Minutes of November 30, 2015**

The Governing Body met at 4:00 pm this date with the following members present and participating to wit: Commissioner Dickinson, Commissioner Caylor, Commissioner Reed, and Commissioner Graves were all present. Mayor Skidmore was absent. A quorum was present.

Mayor pro tem Dickinson called the meeting to order.

Public Comments

None given at this time.

Interview for Accessibility Advisory Board

The Governing Body interviewed Nabila Formusoh for the Accessibility Advisory Board.

Minutes to Review

The Governing Body reviewed minutes from the November 4-7, 2015 Special Call Meeting for NLC Conference, November 4, 2015 and November 18, 2015 Regular Meetings, November 9, 2015 Study Session, November 10, 2015 Special Call for LKM Supper, November 16, 2015 Special Call Meeting for Time Change and November 16, 2015 Special Call Walnut Bike Lane Meeting. With the requested changes, it was agreed to place this item on the next regular meeting agenda.

2016 Cereal Malt Beverage License Renewals

The Governing Body heard from Finance Director Scott Bird regarding the 2015 Cereal Malt Beverage License Renewal Applications. It was agreed to place this item on the next regular meeting agenda.

Resolution—Property Annexed in 2015

The Governing Body heard from Community Development Director Wynndee Lee regarding a resolution to declare the entire boundary of the city. In 2015, one 4.5 acre tract was annexed. It was agreed by the Governing Body to place this item on the next regular meeting agenda.

Ordinance—Conditional Use Permit 1320 W 19th

The Governing Body heard from Community Development Director Wynndee Lee regarding USD 290 seeking a conditional use permit to allow for construction of an elementary school at 1320 W 19th Street. The current zoning regulations at this address require a conditional use permit. The Governing Body agreed to place this item on the next regular meeting agenda.

Resolution—Kansas Department of Transportation Mapping Changes

The Governing Body heard from Community Development Director Wynndee Lee regarding two resolutions for the Kansas Department of Transportation Mapping Changes. The first resolution is to approve urban city functional classification systems for the City of Ottawa. The second resolution is to establish urban area boundary lines around the City of Ottawa. It was agreed to place these items on the next regular meeting agenda.

United Way of Franklin County

The Governing Body heard from Meg Pearson, Rhonda Magee, and Michael Jones regarding an update from the United Way of Franklin County.

Ottawa Municipal Auditorium Director Position Profile

The Governing Body heard from Human Resources Director Michelle Stegman and City Manager Richard U Nienstedt regarding the OMA Director Position Profile. The Governing Body discussed targeted dates for interviews as well as advertising for the position.

Monthly Reports

The Governing Body reviewed the October monthly reports with City Staff.

City Manager's Report

City Manager Richard U Nienstedt reported:

- Will not be at the Meeting on December 2, 2015
- Need an executive session for a period of 20 minutes with the City Attorney present.

Commissioners' Reports

Commissioner Reed reported on the National League of Cities Conference.

Commissioner Graves reported on the lighting of the Mayor's Christmas Tree.

Mayor's Report

Mayor pro tem Dickinson reported:

- Was glad to be a part the acceptance of the accreditation for the Police Department. Congratulations to Chief Butler.

Review—Accessibility Advisory Board Interview

The Governing Body discussed and agreed to place the nomination of Nabila Formusoh to the Accessibility Advisory Board on the next regular meeting agenda.

Announcements

Mayor pro tem announced:

- December 2, 2015: Regular Meeting, 7:00 pm, City Hall
- December 7, 2015: Study Session, 4:00 pm, City Hall

Executive Session

Recess

Commissioner Caylor made a motion, seconded by Commissioner Reed to recess into executive session for a period of 20 minutes with no action to be taken after. The purpose of the executive session is attorney-client privilege with City Manager Richard U Nienstedt and City Attorney Blaine Finch in attendance. The motion was considered and upon being put, all present voted aye. The Mayor pro tem declared the meeting duly recessed at 5:20 pm.

Reconvene

Commissioner Reed made a motion, seconded by Commissioner Caylor to reconvene into regular study session. The motion was considered and upon being put, all present voted aye. The Mayor pro tem declared the study session duly reconvened at 5:40 pm.

Adjournment

There being no further business to go before the Governing Body, Commissioner Caylor made a motion, seconded by Commissioner Graves to adjourn the meeting. The motion was considered and upon being put, all present voted aye. The Mayor pro tem declared the meeting duly adjourned at 5:40 pm.

Carolyn S. Snethen, City Clerk

CITY OF OTTAWA

To: Richard U Nienstedt and the Honorable City Commission

From: Hailey Luke, Assistant City Clerk

Subject: Cereal Malt Beverage Application (CMB): New Ownership

Date: December 14, 2015



Cosentino Group, Inc. d/b/a Price Chopper (#403), the new owner of Ottawa Price Chopper as of December 27, 2015, has submitted an application for Cereal Malt Beverage License for the 2015 and 2016 calendar year. We have a copy of their Kansas Department of Revenue Retailers' Sales Tax Certificate, as well as, the completed and signed Cereal Malt Beverage Application. The application has been reviewed and approved by the Police Department and the City Attorney with no reason for denial.

This CMB License Application is for a license to sell Cereal Malt Beverages in original and unopened containers and not for consumption on the licensed premises.

Staff respectfully requests this item to be placed on the study session agenda, December 14, 2015 for consensus to be placed on the Regular Meeting Consent Agenda, December 16, 2015.

Memorandum

To: Richard U. Nienstedt, City Manager and Governing Body

From: Dennis Tharp, Director of Utilities

Date: 12/14/2015

Re: Marshall Wind Farm

KMEA has proposed to purchase 7 MW of Marshall Wind at \$33.80 per MWh flat for 20 years. The project is forecasted to have a yearly capacity factor of 50%. Four of the six EMP1 (Energy Management Project #1) member cities have expressed a desire to purchase the 7 MW's in aggregate. There are multiple wind projects both proposed and being constructed in Kansas, however Marshall is different in many respects.

1) **Location** The location of Marshall in north eastern Kansas is closer in proximity to the EMP1 load than most other wind farms which lie in Western Kansas. The proximity to the EMP1 load will minimize risk in obtaining transmission compared to other projects. Additionally, since the location is closer to the EMP1 load than other projects, this makes the injection price highly correlated to the EMP1 load price.

2) **Size and Partners** Marshall is a relatively small project, 72MWs of installed generation, owned by an American company compared to many projects which average over 300 MW and have ownership from foreign companies. The larger projects generally require minimum participation much greater than our 7 MW need. The size of this project allowed KMEA to participate on the owners committee on an equal basis with the 3 other participants which are also municipals with similar goals.

3) **Long-term price certainty** Wind energy provides for resource diversity in your long term power supply plan and the Marshall contract further minimizes risk in long term supply by assigning the negative LMP pricing and curtailments to the wind farm owner. These safeguards add considerable value to the cities and are not standard products offered from wind farms. Renewable wind energy credits from Marshall have value on the market if the cities chose to sell them.

4) **Timing of project** Marshall Wind Energy is here and now. The project is no longer a proposed project but rather it is under construction. Although there is no current requirement in Kansas for municipal electric utilities to have renewable energy in their portfolios, that could change.

5) **Price** Marshall Wind farm, priced at \$33.80 per MWh has a positive return on investment over the 20 year life when evaluated using a 3rd party's market price forecast (not the GL Garrard Hassan Study provided by developer). While Marshall is priced higher than some projects currently being offered in the market we feel that the location, size and partners, long-term price certainty and lastly the timing of the project justify the contract price. See table below.

EMP1 Marshall Wind Project Summary

Year	Annual Production (MWh)	Marshall LMP Projections	Annual Projected Injection Credits	Contracted Rate (\$/MWh)	Annual Cost (Total \$)	Savings (Total \$)
2016	31,317	\$28.40	\$889,391.44	\$ 33.80	\$1,058,501.08	(\$169,109.64)
2017	31,414	\$29.24	\$918,552.67	\$ 33.80	\$1,061,801.65	(\$143,248.98)
2018	31,317	\$30.13	\$943,569.16	\$ 33.80	\$1,058,501.08	(\$114,931.92)
2019	31,317	\$31.03	\$971,754.10	\$ 33.80	\$1,058,501.08	(\$86,746.98)
2020	31,317	\$31.96	\$1,000,878.54	\$ 33.80	\$1,058,501.08	(\$57,622.54)
2021	31,414	\$32.91	\$1,033,842.97	\$ 33.80	\$1,061,801.65	(\$27,958.68)
2022	31,317	\$33.91	\$1,061,945.91	\$ 33.80	\$1,058,501.08	\$3,444.83
2023	31,317	\$34.92	\$1,093,575.67	\$ 33.80	\$1,058,501.08	\$35,074.59
2024	31,317	\$35.97	\$1,126,458.10	\$ 33.80	\$1,058,501.08	\$67,957.02
2025	31,414	\$37.04	\$1,163,583.82	\$ 33.80	\$1,061,801.65	\$101,782.17
2026	31,317	\$38.16	\$1,195,041.46	\$ 33.80	\$1,058,501.08	\$136,540.38
2027	31,317	\$39.31	\$1,231,055.55	\$ 33.80	\$1,058,501.08	\$172,554.47
2028	31,317	\$40.39	\$1,264,877.47	\$ 33.80	\$1,058,501.08	\$206,376.39
2029	31,414	\$41.68	\$1,309,345.94	\$ 33.80	\$1,061,801.65	\$247,544.29
2030	31,317	\$42.95	\$1,345,047.97	\$ 33.80	\$1,058,501.08	\$286,546.89
2031	31,317	\$44.24	\$1,385,446.38	\$ 33.80	\$1,058,501.08	\$326,945.30
2032	31,317	\$45.57	\$1,427,097.46	\$ 33.80	\$1,058,501.08	\$368,596.38
2033	31,414	\$46.92	\$1,473,956.61	\$ 33.80	\$1,061,801.65	\$412,154.96
2034	31,317	\$48.34	\$1,513,844.44	\$ 33.80	\$1,058,501.08	\$455,343.36
2035	31,317	\$49.79	\$1,559,253.51	\$ 33.80	\$1,058,501.08	\$500,752.43
			20 year Savings			\$2,721,995
			20 Year Net Present Value		\$1,003,830	

% of Wind Compared to Load			
Baldwin	Gardner	Garnett	Ottawa
12.70%	7.60%	13.00%	7.30%

It is staff recommendation to move forward with adding this energy purchase to our existing portfolio asking that it be moved to the December 16, 2015 Commission meeting agenda for vote. The table above was created using a 3rd party market price forecast (not The GL Garrad Hassan study data) purchased by Independence Power and Light when they produced the economic evaluation of Marshall Wind farm. IP&L determined that the forward gas prices used in the Hassan report were too high. IP&L reduced the natural gas prices when they conducted the economic analysis . We also believe that the current discounted gas prices are not a good starting point for predicting future gas prices.

**MARSHALL WIND FARM PROJECT
RENEWABLE ENERGY POWER SALES AGREEMENT**

BETWEEN

KANSAS MUNICIPAL ENERGY AGENCY

AND

CITY OF OTTAWA, KANSAS

Dated as of _____, 2016

MARSHALL WIND FARM PROJECT

RENEWABLE ENERGY POWER SALES AGREEMENT

This RENEWABLE ENERGY POWER SALES AGREEMENT (this “Sales Agreement”), is made this ____ day of _____, 2016 (the “Effective Date”), by and between KANSAS MUNICIPAL ENERGY AGENCY, a municipal energy agency organized under the laws of the State of Kansas (“KMEA”), and the CITY OF OTTAWA, KANSAS, a municipal corporation organized under the laws of the State of Kansas (“City”; and, together with KMEA, each individually referred to herein as a “Party” and collectively as the “Parties”).

WITNESSETH

WHEREAS, MARSHALL WIND ENERGY LLC (“Marshall”) intends to construct a Wind Farm with up to approximately 72 MW aggregate nameplate capacity on a site located in Marshall County, Kansas and will interconnect it with the Transmission System; and

WHEREAS, KMEA intends to contract with Marshall, on behalf of certain member cities of KMEA, to purchase Renewable Energy from Marshall, all on the terms and conditions set forth in a RENEWABLE ENERGY POWER PURCHASE AGREEMENT, dated as of _____, 2016 (the “Purchase Agreement”); and

WHEREAS, the City desires to purchase and receive, subject to terms herein, Renewable Energy from KMEA, all on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

Section 1. Defined Terms. Unless expressly stated otherwise in this Sales Agreement, capitalized terms used in this Sales Agreement shall have the meanings indicated in the Purchase Agreement referenced as *Exhibit A*.

“City’s Share” shall mean a percentage determined by converting to a percentage the number obtained by dividing (a) 2.5 MW by (b) the lesser of, at the time of any determination thereof, (i) the aggregate sum, expressed in MWs, of the nameplate capacity specified by the manufacturer for all of the WTGs installed in the Wind Farm and interconnected with the Transmission System (or, if at the time of determination of Purchaser’s Share construction and installation of the WTGs that have been contracted by Seller to be acquired and installed in the Wind Farm has not been completed, the aggregate nameplate capacity of the WTGs then contracted by Seller to be acquired and installed) or (ii) the amount of Interconnection Service (as defined in the Interconnection Agreement), expressed in MWs, provided to Seller by the Transmission Provider pursuant to the Interconnection Agreement (which amount is 73.8 MWs as of the Effective Date). The “City’s Share” of each member purchasing Renewable Energy is set forth on *Exhibit B*, as may be amended from time to time, which attached hereto and incorporated herein by reference.

“Utility Assets” shall mean the assets owned or leased by the City (including interests therein) and contractual rights of the City to purchase electric energy from the Wind Farm Project.

Section 2. Sale and Purchase Obligation. In accordance with the terms and conditions hereof and the Purchase Agreement, throughout the Delivery Term, KMEA shall sell and deliver at the Product Delivery Point, and the City shall purchase from KMEA at the Product Delivery Point, the City's Share of the Renewable Energy available from the Wind Farm, as provided herein. Title to and risk of loss with respect to the City's Share of Metered Energy shall pass from KMEA to and the City when the same is made available by Marshall at the Product Delivery Point.

The Parties acknowledge and understand that wind is an intermittent resource and that the Energy produced by the Wind Farm, which is dependent on wind and other factors, will vary and that no particular amount of Metered Energy is guaranteed or represented in amount or time of delivery.

KMEA will contract on behalf of the City for any transmission that is needed to deliver the City's Share of the Metered Energy beyond the Product Delivery Point, and the City agrees to pay for all the costs of transmission including but not limited to costs associated with congestion and losses, application fees and any upgrade requirements.

The sale by KMEA of City's Share of Metered Energy shall include all rights to claim, assign, transfer, sell or otherwise benefit from one hundred percent (100%) of the Renewable Attributes, if any, associated with such total number of MWh of Metered Energy. KMEA MAKES NO REPRESENTATION, WARRANTY, OR COVENANT EITHER EXPRESS OR IMPLIED, REGARDING THE CURRENT OR FUTURE EXISTENCE OF ANY RENEWABLE ATTRIBUTES OR ANY LAW GOVERNING THE EXISTENCE OF ANY RENEWABLE ATTRIBUTES UNDER THE PURCHASE AGREEMENT OR OTHERWISE OR THEIR CHARACTERIZATION OR TREATMENT UNDER APPLICABLE LAW OR OTHERWISE.

Section 3. Contract Price. The price to be paid by the City to KMEA for each MWh of City's Share of Metered Energy shall be the price set forth in *Section 2.2* of the Purchase Agreement. The City agrees to pay KMEA for all other costs associated with the City's Share of Metered Energy and transmission to the City, including but not limited to, the costs as provided in *Sections 2.1.2, 2.5.2, and 3.7.2.*

Section 4. Billing and Payment. KMEA will bill the City for all costs related to the City's Share of Metered Energy and the transmission costs associated with delivery to the City on a monthly basis. Payments will be due to KMEA in accordance with the provisions in the invoices generated by KMEA and delivered to the City.

All payments hereunder shall be made without set-off or deduction. Any disputes in the amount of the invoices shall be resolved in accordance with the provisions of *Section 2.3* of the Purchase Agreement; provided the City gives advance notice to KMEA requesting that KMEA dispute the invoiced amount with Marshall. Any payment not made within the time limits specified in the invoice shall bear interest at the Interest Rate from the date on which payment was required to have been made through and including the date such payment is actually received by the Party to whom it is due.

Section 5. Rights and Duties under Purchase Agreement. (a) Upon advance notice, KMEA will arrange for the City to have rights of access to the Marshall facilities. KMEA will provide the City all operational information and reports provided by Marshall, notify the City of all scheduled maintenance outages and all other information available under the Purchase Agreement. The City may request through KMEA the testing of all metering equipment in accordance with *Article 5* of the Purchase Agreement. The City agrees to pay for any costs for such testing as provided for in *Article 5* of the Purchase Agreement.

(b) Upon occurrence of an Event of Default, KMEA will notify the City of any action taken under the Purchase Agreement, including all notices and remedies exercised under *Section 4.3, 4.4 and 4.5* of

the Purchase Agreement. The City acknowledges and expressly agrees to be bound by the Limitations on Damages set forth in *Section 4.7* of the Purchase Agreement.

(c) The City acknowledges and expressly accepts that all the representations and warranties made by KMEA in *Section 6.3* of the Purchase Agreement are also applicable to the City and are made by the City as if set forth herein. With respect to *Section 6.3.8* of the Purchase Agreement, the parties interpret this Section to mean that *all* operating and maintenance costs of the City payable from revenues of the Utility Assets enjoy first priority of payment under any and all bond ordinances or indentures to which the City is a party entered into in connection with the Utility Assets, and the City's obligation to make payments under this Agreement is deemed to constitute one of the City's operating and maintenance costs. The City also agrees to comply with all covenants as set forth in *Section 6.4* of the Purchase Agreement as if the City were a party thereto, with the following exceptions. First, with respect to the representation made within *Section 6.4.3* relating to Purchaser's obligation to generate sufficient revenue to meet debt service coverage ratios applicable to debt obligations, the parties agree that the City's obligation shall be to generate sufficient revenue to meet debt service coverage ratios applicable to debt obligations of the City of Ottawa and not the debt obligations of KMEA or any other entity. Second, to the extent that *Section 6.4.4* of the Purchase Agreement could be construed to constitute a waiver of the immunities contained within the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., as amended, relating to liability based in tort rather than liability based in contract, the City does not agree to waive such sovereign immunity.

(d) To the extent permitted by Kansas law, the City acknowledges and accepts the indemnification provisions set forth in *Article 7* of the Purchase Agreement. In the event Marshall makes a claim against KMEA attributable to the City, the City agrees to pay all costs related to the claim. KMEA agrees to confer with the City on any claims made under the Purchase Agreement. KMEA will credit to the City its proportionate share of any indemnification or insurance proceeds received from Marshall.

(e) The City acknowledges and expressly accepts the provisions relating to any Force Majeure Event set forth in *Section 9.4* of the Purchase Agreement and will comply with such provisions to the extent applicable to the City.

Section 6. Miscellaneous. (a) This Sales Agreement may not be amended unless the amendment is made in writing and signed by authorized representatives of both Parties.

(b) Each notice, request, demand, or statement required or permitted by this Sales Agreement, or any notice that either Party may desire to give to the other, shall be in writing and shall be considered as delivered when (a) hand-delivered, or (b) received by the other Party by certified United States mail or reputable overnight courier addressed to the other Party at its address indicated below. Notices related to operational issues may be given to the addresses listed below by telephone, electronic mail or to such addresses and by such other means as the Parties may from time to time agree.

To KMEA:

Kansas Municipal Energy Agency
6300 West 95th Street
Overland Park, Kansas 66212-1431
Phone: (913) 660-0234
Email: mahlberg@kmea.com
Attn: Paul Mahlberg, General Manager

With a copy to:

Email: ssteele@gilmorebell.com

To City:

City of Ottawa, Kansas
101 S. Hickory Street
PO Box 60
Ottawa, Kansas 66067
Phone: (785) 229-3632
Email: dtharp@ottawaks.gov
Attn: Dennis Tharp

With a copy to:

Email: sbird@ottawaks.gov

(c) This Sales Agreement shall be interpreted, governed by and construed in accordance with the laws and regulations of the State of Kansas and/or the laws and regulations of the United States, as applicable, without regard to principles of conflict of laws. The Parties acknowledge and expressly agree to be bound by the provisions in the Purchase Agreement relating to arbitration (*Section 9.14*), the venue in which to pursue any actions (*Section 9.8*) and public records and confidentiality (*Section 9.17*).

(d) This Sales Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Sales Agreement may not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned.

(e) To the extent not otherwise provided herein, the Parties expressly incorporate all other provisions of the Purchase Agreement attached hereto as *Exhibit A* and agree to be bound by all provisions of the Purchase Agreement to the extent applicable to such Party.

(f) This Sales Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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SIGNATURES BEGIN ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives as of the Effective Date.

KANSAS MUNICIPAL ENERGY AGENCY

By: _____
Name: _____
Title: _____

CITY OF OTTAWA, KANSAS

By: _____
Name: _____
Title: Mayor

(SEAL)

ATTEST:

By: _____
Name: _____
Title: City Clerk

EXHIBIT A

**MARSHALL WIND FARM PROJECT
RENEWABLE ENERGY POWER PURCHASE AGREEMENT
BETWEEN
KANSAS MUNICIPAL ENERGY AGENCY
AND
MARSHALL WIND ENERGY LLC**

**[Final Contract is subject to Confidentiality Requirements
and separately retained by the City]**

EXHIBIT B

ALLOCATION OF RENEWABLE ENERGY

Baldwin City – 1.0 MW

Gardner - 2.5 MW

Garnett – 1.0 MW

Ottawa – 2.5 MW

(ORDINANCE OR A SUMMARY THEREOF PUBLISHED IN THE
OTTAWA HERALD ON _____, 201__)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OTTAWA, KANSAS, AUTHORIZING THE EXECUTION OF THE MARSHALL WIND FARM PROJECT RENEWABLE ENERGY POWER SALES AGREEMENT BETWEEN THE CITY OF OTTAWA, KANSAS, AS PURCHASER, AND THE KANSAS MUNICIPAL ENERGY AGENCY, AS SELLER; AND MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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

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

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

WHEREAS, KMEA intends to enter into the Marshall Wind Farm Project Renewable Energy Power Purchase Agreement with Marshall Wind Energy, LLC for seven megawatts (7 MW) of capacity and renewable energy; and

WHEREAS, the City desires to enter into the Marshall Wind Farm Project Renewable Energy Power Sales Agreement (the "**Power Sales Agreement**") with KMEA relating to the City's purchase of a share of the electricity generated at the Marshall Wind Farm Project for a period of twenty (20) years, substantially in the form presented to the governing body with this Resolution.

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

Section 1. Authorization of Power Sales Agreement. The Power Sales Agreement is hereby approved in substantially the form presented to the governing body this date.

Section 2. Obligation to Make Payments. The governing body of the City hereby acknowledges the payments made under the Power Sales Agreement are unsubordinated obligations payable from all revenues derived from the City's electric utility system (the "*Utility Assets*") and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which City is a party entered into in connection with the Utility Assets and (b) otherwise not subject to any prior claim under any and all other bond ordinances or indentures to which the City is a party or by which the City or any of the assets of, or revenues from, the Utility Assets is bound or subject, or any applicable laws. The obligation of the City to make payments to KMEA under the Power Sales Agreement, whether or not reduced to judgment, shall not constitute general obligations of the City, and the City shall not be required to make such payments from any source other than the revenues of the Utility Assets.

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

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

Section 5. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body of the City.

PASSED by the governing body of the City and signed by the Mayor this ____ day of _____, 201__.

(SEAL)

Mayor

ATTEST:

City Clerk

CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on _____, 201__; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in the Ottawa Herald on _____, 201__.

DATED: _____, 201__.

Clerk

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(PUBLISHED IN THE OTTAWA HERALD ON _____, 201__)

SUMMARY OF ORDINANCE NO. _____

On _____, the governing body of the City of Ottawa, Kansas passed an ordinance entitled:

AN ORDINANCE OF THE CITY OF OTTAWA, KANSAS, AUTHORIZING THE EXECUTION OF THE MARSHALL WIND FARM PROJECT RENEWABLE ENERGY POWER SALES AGREEMENT BETWEEN THE CITY OF OTTAWA, KANSAS, AS PURCHASER, AND THE KANSAS MUNICIPAL ENERGY AGENCY, AS SELLER; AND MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

The documents approved in the Ordinance relate to the purchase of renewable energy and associated capacity produced at the Marshall Wind Farm Project for a period of twenty (20) years. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 101 S. Hickory Street, Ottawa, Kansas 66067. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.ottawaks.gov.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: _____

City Attorney

INTERLOCAL AGREEMENT BETWEEN FRANKLIN COUNTY, KANSAS AND THE CITY OF OTTAWA, KANSAS PROVIDING JOINT REGULATION OF THE USE AND DEVELOPMENT OF LAND WITHIN TERRITORY DESIGNATED AS THE "URBAN GROWTH AREA" OF THE CITY OF OTTAWA.

This Interlocal Agreement ("Agreement") is entered into this 30th day of June, 2006, by and between Franklin County ("County") and the City of Ottawa ("City").

WHEREAS, K.S.A. 12-2901 *et seq.*, and K.S.A. 12-744 (c) provide legal authority for cities and counties to cooperate in the exercise of their powers in a manner that will best serve the public interest; and

WHEREAS, K.S.A. 12-741 recognizes the authority of cities and counties to use Home Rule powers to pass nonconflicting laws on planning and zoning (K.S.A. 19-101a *et seq.* and KS Constitution, Art. 12, Sec. 5); and

WHEREAS, K.S.A. 12-2901 *et seq.*, the Interlocal Cooperation Act, authorizes cities and counties to enter into interlocal agreements for joint or cooperative action; and

WHEREAS, Franklin County and the City of Ottawa desire to enter into an interlocal agreement for the regulation of the use and development of land outside the city limits of the City of Ottawa;

NOW THEREFORE, it is hereby agreed by and between the parties hereto, as follows:

Section 1. Purpose and Scope

- a. The purpose of this Agreement is to provide for the delegation of certain land use regulatory authority, from the County to the City, over territory designated as the Urban Growth Area (UGA), subject to the conditions set out in this Agreement.
- b. This Agreement shall not be interpreted as affecting the zoning, subdivision and building code enforcement powers of the City or County other than within the UGA. All powers of the County over unincorporated territory outside the designated UGA, and all powers of the County over territory within the designated UGA other than those relating to zoning, subdivision, and building code regulations, as provided for in this Agreement, are expressly reserved to the County, including but not limited to enforcement of sanitation and nuisance codes.
- c. This Agreement shall not be interpreted as granting to the City any greater authority than that held by the County for the regulation of the land and structures used for agricultural purposes.
- d. Administration of this Agreement shall be the responsibility of the Mayor of the City of Ottawa and the Chair of the Franklin County Board of County Commissioners.

Section 2. Planning Area Boundaries; Adjustments

- a. The City and County hereby designate certain territory outside the City's corporate limits but within Franklin County, as the Urban Growth Area (UGA). Land use in the UGA is found to influence City resources, and it is therefore in the public interest for certain land use regulatory authority over the UGA to be held by the City. The UGA is designated on a map that is incorporated by reference within this Agreement as "Attachment A."
- b. Adjustments to the boundaries of the UGA shall be made by passage of a joint resolution and ordinance. Such adjustments shall neither be interpreted as amendments to this Agreement nor as amendments to the City or County zoning, subdivision or building code regulations.

Section 3. Zoning Authority Jurisdiction in the Urban Growth Area

- a. The County hereby delegates to the City its zoning authority under state law, over land within the UGA. Such delegation of authority shall take effect upon: i) the effective date of all amendments to the City's and County's zoning regulations which are required under this Agreement, and ii) the City's appointment of two members to its Planning Commission who reside within three miles of the City's corporate limits. Land within UGA shall continue its zoning classification as established by the County, and administered and enforced by the City, unless and until rezoned in accordance with City and State law.

- b. Delegation of the zoning authority now held by the County to the City over land within the UGA is made with the following conditions:
 - 1. The City shall comply with all statutory procedures for amending its zoning regulations and map to extend its zoning authority over land within the UGA.
 - 2. The County shall comply with all statutory procedures for amending its current zoning regulations and map to remove its zoning authority over land within the UGA.
- c. Zoning regulations first adopted by the City for application in the UGA shall not take effect unless and until first approved by a majority vote of the County Commission.
- d. Proposed text amendments affecting land within the UGA shall be submitted to the County Zoning Administrator for a determination of whether they are a matter of County interest to be considered by the County Commission. Within ten (10) business days following the close of the City Planning Commission's public hearing on the proposed amendment the County shall notify the City Planning Director whether the County Commission objects to the amendment. If the County Commission objects the City Commission may adopt the amendment only upon a four-fifths (4/5) majority vote. If no timely notification is received by the City it is deemed the amendment either is not a matter of County interest or that the County Commission does not object to the amendment.
- e. Rezoning within the UGA that are initiated by the City, shall be submitted to the County Zoning Administrator for a determination of whether they are a matter of County interest to be considered by the County Commission. Within (10) business days following the close of the City Planning Commission's public hearing on the rezoning application the County shall notify the City Planning Director whether the County Commission objects to the rezoning. If the County Commission objects the City Commission may approve the rezoning request only upon a four-fifths (4/5) majority vote. If the City does not receive notification it is deemed the rezoning is not a matter of County interest or that the County Commission does not oppose the rezoning.

Section 4. Zoning Authority Jurisdiction Beyond the Urban Growth Area

- a. The County shall retain all its zoning authority over land beyond the UGA under this Agreement; subject to the conditions set out in this section.
- b. All text amendments to the County's zoning regulations affecting land beyond the UGA boundary shall be submitted to the City's Planning Director for review and comment. Such review and comment shall be made within ten (10) days following the close of the County Planning Commission's public hearing on the proposed amendment. The County Commission shall not take final action on such text amendments prior to receiving and considering comments of the City Planning Director. If the County does not receive notification it is deemed the amendment is not a matter of City interest or that the City Commission does not object to the amendment.
- c. All applications for rezoning and special use permits affecting land within one mile of the UGA shall be submitted to the City Planning Director for review and comment. Such review and comment shall be made within ten (10) business days following the close of the County Planning Commission's public hearing on the application. The County Commission shall not take final action on such applications prior to receiving and considering comments of the City Planning Director. If the County does not receive notification it is deemed the rezoning or special use permit is not a matter of City interest or the City Commission does not object to the application.

Section 5. Subdivision Authority Jurisdiction within the Urban Growth Area

- a. The County hereby delegates to the City its subdivision authority over land within the UGA designated under this Agreement. Such delegation of authority shall take effect upon the effective date of all amendments to the City's and County's subdivision regulations which are required under this Agreement. Until such delegation takes effect land within the UGA shall continue to be subject to the subdivision regulations of the County.

- b. Delegation of all subdivision authority now held by the County over land within the UGA is made, except where the County expressly retains such authority by the provisions of this Agreement, and except where such delegation is conditioned, as follows:
 - 1. The City shall comply with all statutory procedures for amending its current subdivision regulations to extend its subdivision jurisdiction within the UGA.
 - 2. The County shall comply with all statutory procedures for amending its current subdivision regulations to remove its subdivision authority over land within the UGA.
- c. Subdivision regulations first adopted by the City for application in the UGA shall not take effect unless and until approved by a majority vote of the County Commission.
- d. Proposed text amendments affecting the UGA shall be submitted to the County Zoning Administrator for a determination of whether the proposed amendment is a matter of County interest to be considered by the County Commission. Within ten (10) business days following the close of the City Planning Commission's public hearing on the proposed amendments the County shall notify the City Planning Director whether the County Commission objects to the amendments. If the County Commission objects, the County Commission may adopt the amendments only upon a four-fifth (4/5) majority vote. If the City does not receive notification it is deemed the amendment is not a matter of County interest or that the County Commission does not object to the amendment.

Section 6. Subdivision Authority Jurisdiction Beyond the Urban Growth Area

- a. The County shall retain all its subdivision authority over land beyond the UGA designated under this Agreement, subject to the conditions set out in this section.
- b. Text amendments to the County's subdivision regulations affecting land beyond the UGA shall be submitted to the City Planning Director for review and comment. Such review and comment shall be made within ten (10) business days following the close of the County Planning Commission's public hearing on the proposed amendment. The County Commission shall not take final action on a text amendment prior to receiving and considering the City Planning Director's comments. If no timely notification is received by the County it is deemed the amendment either is not a matter of City interest or that the City Commission does not object to the amendment.
- c. All applications for preliminary and final plats affecting land within one mile of the UGA shall be submitted to the City Planning Director for review and comment. Such review and comment shall be made within ten (10) business days following the close of the County Planning Commission's public hearing on the application. The County Commission shall not take final action on such applications prior to receiving and considering the comments of the City Planning Director. If the County does not receive notification it is deemed the plat application is not a matter of City interest or that the City Commission does not object to the plat application.

Section 7. Building Code Authority Jurisdiction within the Urban Growth Area

- a. As authorized by K.S.A. 12-751(b), the City under this Agreement may adopt and enforce building codes within the designated UGA.

Section 8. Building Code Authority Jurisdiction Beyond the Urban Growth Area

- a. The County shall retain all its building code authority over land beyond the UGA designated under this Agreement, subject to the conditions set out in this section.
- b. All amendments to the County's building codes affecting land beyond the UGA shall be submitted to the City Planning Director for review and comment. Such review and comment shall be made within ten (10) business days of submission. The County Commission shall not take final action on such amendments prior to receiving and considering comments of the City Planning Director. If no timely notification is received by the County it is deemed the amendment either is not a matter of City interest or that the City Commission does not object the amendment.
- c. All building permit applications for commercial and industrial uses within one mile of the UGA shall be submitted to the City Planning Director for information purposes.

Section 9. Duration and Eff.

a. This Agreement shall be perpetual in duration, unless terminated in accordance with Section 10, and shall be in effect from the latter of the date the Agreement has been filed with the Franklin County Register of Deeds or filed with the Secretary of State pursuant to K.S.A. 12-2905. Such filings shall occur after approval of this Agreement by the Attorney General.

Section 10. Termination

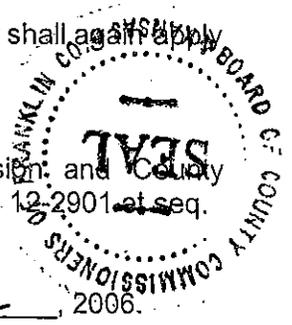
- a. At the end of the initial ten year duration of this Agreement, either City or County may unilaterally terminate this Agreement upon giving six months written notice to the other party of its intent to withdraw, with such termination becoming effective following the running of the six month notice and upon the action of the Governing Body of the terminating entity.
- b. The City and the County may mutually agree to terminate this Agreement at any time.
- c. Upon termination of this Agreement all land use regulatory authority of the County shall apply to all unincorporated territory designated as the UGA and land beyond the UGA.

Section 11. Amendment

a. This Agreement may be amended by majority vote of the City Commission and County Commission, following procedures set out in the Interlocal Cooperation Act, K.S.A. 12-2901 et seq.

Section 12. Approvals and Filings

a. Approved by enactment of Resolution # 06-040 on the 14th day of June, 2006.



[Signature]
Ed Taylor, Chair, Franklin County Commission

[Signature]
Shari Perry, Franklin County Clerk

Approved by adoption of Ordinance # 3582-06 on the 21st day of June, 2006.

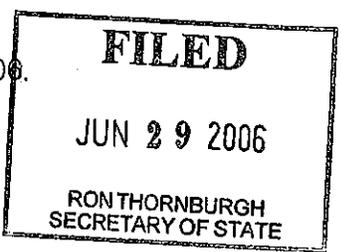
[Signature]
Deborah Henningsen, Mayor, City of Ottawa

[Signature]
Scott D. Bird, Ottawa City Clerk

c. Approved by the Kansas Attorney General on the 26th day of June, 2006.

[Signature] by Asst. Att.
Phill Kline, Attorney General
By: [Signature] Gen. M. Fleury

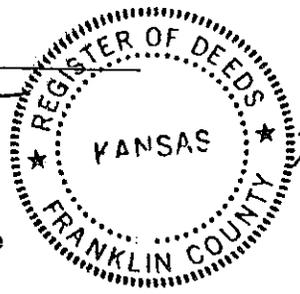
d. Filed with the Secretary of State on the 29th day of June, 2006.



[Signature]
Ron Thornburgh, Secretary of State

e. Filed with the Franklin County Register of Deeds on the 30th day of June, 2006.

[Signature]
Sue McCay, Register of Deeds



FILED FOR RECORD
TIME 2:30 P.M.
JUN 30 2006
Book 231 Page 195
REGISTER OF DEEDS, FRANKLIN CO., KS
INSTRUMENT # 5214

MEMORANDUM OF UNDERSTANDING

Operational Matters Involving the City and County Interlocal Agreement.

WHEREAS, the City of Ottawa (City) and Franklin County (County) have entered into an Interlocal Agreement providing joint regulation of land use and development within the Urban Growth Area (UGA) in June, 2006 , (the Interlocal); and

WHEREAS, the parties have determined that there are certain operational issues that need to be addressed to further the goals of the Interlocal agreement; and

WHEREAS, over the course of three years and with much effort and expense, the City has rezoned the area inside of the UGA, and in the course of such rezoning had become aware of certain questions in the application of the Zoning regulations to situations in the UGA; and

WHEREAS, the UGA outlines a process in which to address changes in the City's Zoning code, a process that has been followed numerous times in the past three years; and

WHEREAS, the City and County have different fee schedules for providing inspections and permits, each fee schedule reflecting a different application of involvement and regulation depending on the nature of the building or structure; and

WHEREAS, the City and the County, at the direction of their respective Governing bodies, have met at a staff level to resolve the issues and inconsistencies to the best of their abilities in order to fulfill the obligations and goals contained in the Interlocal Agreement;

NOW THEREFORE, the parties to this Memorandum of Understanding do hereby agree as follows:

1. The County will issue building permits for residential and agricultural building activity at the County established rate for permits. All other activity will obtain their permits from the City, at the established City fee structure for permits. All parties shall use the [redacted] building code regulations as adopted by the permit issuing agency.
2. The definition of 'subdivision' for the purposes of this Memorandum shall be the definition used in the Ottawa Zoning and Subdivision regulations. This agreement shall only be for Subdivisions that have been platted since the Interlocal Agreement has been signed by both parties, and for the duration of the Interlocal Agreement.
3. The City and County agree that with respect to text amendments to the City's Zoning regulations, both parties will notify the other of the proposed changes and solicit comment on the application and implementation of such changes as it pertains to the UGA.

4. Both parties to this Memorandum wish to clarify the application of city and county road construction standards for subdivisions that are planned and built in the UGA and which are not annexed into the City. The clarification is that the roads may be planned for eventual incorporation into the City, and right of way and design for such incorporation will be required by the City in planning and review, but the actual construction of such roads shall be to county standards.
5. The parties to this Memorandum also wish to clarify the application of set-back requirements to fences built in the AG district. Fences in the AG and CS districts of the UGA shall have no setback requirement to adjoining property provided that the fence is for agricultural purposes.
6. The parties further agree that the City Commission and the County Commission shall meet annually to review, discuss and if necessary revise or create this or other documents with regard to concerns or activity with the UGA.
7. The City and the County agree that in the UGA the County will have jurisdiction and enforcement authority over property nuisance violations. As nuisance violations are part of the City Municipal Code, the City has no jurisdiction to enforce this code outside of city limits. To the extent the violation is one of the use of land, such as a violation of land use regulation (salvage operation in violation of Zoning Code), the City shall have jurisdiction and enforcement authority. The County also recognizes that the City has no authority over fireworks sales and storage within the UGA, for the same reason.
8. This Memorandum of Understanding is only effective and enforceable so long as the underlying Interlocal Agreement is in full force and effect (adopted June,2006 for a ten year initial term). Should the Interlocal Agreement be terminated, this MOU shall also be terminated.

By their signatures the Governing Bodies of the City of Ottawa and the County of Franklin so endorse and agree, as evidenced by the attached record of their respective Clerks demonstrating an affirmative vote in favor of, and their respective signatures as indicated below.

Dated this 21st day of March 2012.

By the City of Ottawa, Kansas:

Mayor Gene Ramsey

Commissioner Blake Jorgensen

Commission Linda Reed

Commissioner Jeff Richards

Commissioner Sara Caylor

Gene Ramsey
Blake Jorgensen
Linda Reed
Jeff Richards
Sara Caylor

Attest:

Scott Bird
Scott Bird, Director of Finance

By the County of Franklin, Kansas:

Chairman David Hood

Commissioner Colton Waymire

Commissioner John "Ed" Taylor

Commissioner Steve Harris

Commissioner Don Stottlemire

Linda Reed
Colton M. Waymire
John E. Taylor
Steve Harris
Don Stottlemire

Attest:

Shari Perry
Shari Perry, County Clerk