

SECOND AMENDMENT TO THE
AGREEMENT CREATING
THE KANSAS POWER POOL (“KPP”),
A MUNICIPAL ENERGY AGENCY

- 1) By resolution, approved by a majority of the members of the governing body of each City named herein, executed by the Mayor of each named City, the following Second Amendment to the Agreement creating a Municipal Energy Agency is hereby made to wit:
- 2) The name of the agency shall be The Kansas Power Pool (“KPP”), a Municipal Energy Agency.
- 3) The duration of The Kansas Power Pool (“KPP”), a Municipal Energy Agency shall be perpetual.
- 4) The address of KPP’s Registered Office and the name of its Resident Agent may change from time to time as allowed under the By-Laws, but currently is as follows:
Mark Chesney, CEO/General Manager
Kansas Power Pool
250 West Douglas, Suite 110
Wichita, KS 67202
Telephone: 316-264-3166
Fax: 316-264-3434
E-mail: mchesney@kansaspowerpool.org
- 5) This Second Amendment to the Agreement Creating the Kansas Power Pool (“KPP”), a municipal energy agency, is entered into by the cities that, pursuant to Kansas statute, adopted the Second Amendment as required by statute. A current list of said cities shall be updated by KPP management and attached hereto and incorporated herein by reference as Exhibit 1. The Cities executed documents are on file with and subject to inspection at the offices of KPP.
- 6) The Second Amendment to the Agreement Creating may be amended pursuant to the provisions of K.S.A. §12-889 as the Board of Directors deem necessary. Any amendment, except additions or subtractions of the List of KPP Cities in Exhibit A, shall be approved by resolution of the governing body of each member City and shall be executed by the Mayor of each said City. Any amendment shall be submitted to and approved by the Attorney General pursuant to K.S.A. §12-889.
- 7) The KPP shall have all the specified powers of K.S.A. §12-895, as well as those contained in K.S.A. §12-885 through and including K.S.A. §12-8,111 which statutes are hereby incorporated in and adopted into this Agreement.
- 8) Membership Committee:

a) Membership in the Kansas Power Pool shall be open to all Kansas municipal utilities that meet the membership criteria. Voting members of KPP shall consist of those cities who have a contract for supply of power to its City which has been approved by the Board of Directors of KPP and which City takes service under the Operating Agreement. Each city shall designate a member and alternate member to represent the city as its representative to the Membership Committee of KPP. KPP will, through its Board, adopt and publish its membership criteria and based upon that criteria, make recommendations to its members regarding cities who request membership in KPP.

b) All Membership Committee representatives, both voting and non-voting, shall be directly selected by, and subject to removal at will, by the governing bodies of their voting member cities. The Membership Representative shall be a person who is either a resident of the Member City or who takes service from the Member. Additionally, said representative should either be a member of the governing body, the City Administrator, or the designated representative of the Administrator, City Attorney or the employee of the City.

c) The Membership Committee shall meet annually at the same time and place as called by the President of the KPP for the Annual Meeting of KPP. The Membership Committee meets as a whole each year and Membership Committee members of cities who have signed the Operating Agreement (“Voting Members”) shall approve the annual budget and the rates of KPP for the next year. The Membership Committee may also meet as called by the President.

d) Veto Power of the Membership Committee:

i) Right to Veto. Any combination of representatives of the Membership Committee that have signed the Operating Agreement (“Voting Members”) and represent more than fifty percent (50%) of KPP’s most recent system peak demand shall have the right to veto any action, not listed below, of the majority vote of the Voting Members of the Board of Directors, provided the following conditions are met:

ii) Effect on Bonds or Contracts. A veto cannot be exercised that would affect bonds or bonding decisions, or alter the terms and conditions of any issued bonds, nor adversely affect bonds to the extent that the ratings of KPP could be subject to change. Nor may a veto be exercised to change the term of any contract between the Member Cities and KPP.

iii) Submission of Veto. Such veto in the form of a petition stating the reason for the veto and signed by the appropriate number of

cities' representatives must be submitted to the General Manager, President and Secretary of the Board at least ten (10) days before the next meeting of the Board following the exercise of the veto.

iv) Membership Committee. The Membership Committee may be called to vote to override the veto as is authorized in KPP's grievance procedure.

e) Grievance Procedure: Upon the exercise of a veto by more than fifty percent (50%) of KPP's most recent system peak demand, said veto may be overridden by a vote of the Membership Committee as set forth below:

i) Special Meeting. After a veto is exercised, a special meeting of the Membership Committee of The Kansas Power Pool ("KPP") may be called after a veto is exercised by at least ten (10) member cities whose representatives shall certify on a petition to KPP that they desire for the Membership Committee to be called for the purposes of voting to reject the veto.

ii) The KPP President and/or General Manager/CEO shall establish a date and cause notice to be published to the entire membership of a vote to override a veto at the time and place for which the meeting is called. Said meeting shall take place not longer than twenty (20) days after the petition to veto has been appropriately acted upon.

iii) Notice. KPP shall give at least ten (10) days' notice of such a special membership meeting call.

iv) Meeting and Majority to Override. The Membership Committee shall be called to meet to vote on whether to override the veto. To override any veto, a two-thirds (2/3) vote of the membership must be secured.

9) The number of Directors to serve on the Board of Directors shall be nine board members selected by the voting representatives of the Membership Committee. The nine board members shall include the President, First Vice President, Second Vice President and Secretary/Treasurer. The other five members of the Board of Directors shall be selected from the voting membership of KPP's Membership Committee by a Nominating Committee appointed by the President. Directors are subject to removal by a majority of the voting representatives of the Membership Committee.

i) The Directors shall serve four (4) year terms which shall be staggered.

ii) A Director may be elected or appointed to successive terms of office, or to future partial terms resulting from replacements on or resignations from, the Board of Directors.

iii) A Director shall not have a pecuniary interest in any service or service company from which KPP purchases services, power or professional services which conflicts with the interests of the individual City or Cities who make up KPP or with the interests of KPP. KPP will review and advise any City Member who requests it whether a prospective Member's representative would have a conflict with this provision of the Agreement.

10) Any vacancy occurring on the Board for any reason, other than the expiration of a member's term of office shall be filled for the unexpired term by appointment of a majority of the Board of Directors.

11) A quorum of the Board of Directors shall consist of at least five (5) members for the Board to take action.

12) The President, First Vice President, Second Vice President and Secretary/Treasurer shall be elected by the board of directors of KPP and further, subject to removal at the discretion of the membership as provided in the by-laws, the officers shall serve successively once elected through the offices starting with Secretary/Treasurer, moving to Second Vice President, First Vice President and President. If at any time a member of the Board of Directors resigns, is unable to further serve or is removed by his city, the respective officers shall move up one step. The Board of Directors shall have the power to designate and employ a CEO/General Manager, subject to such terms and conditions as the Board deems advisable. Such CEO/General Manager, subject to the control of the Board of Directors, shall be the Chief Executive Officer of the agency and shall manage, conduct and administer the affairs of the agency. The Board shall additionally have the power to employ or to delegate to the CEO/General Manager the power to employ such engineers, attorneys, agents and other persons, as necessary, to carry out the functions of the agency.

13) The Board shall have the power to adopt resolutions governing the affairs and business of the agency which are not inconsistent with the provisions of this Act, the By-Laws of the agency, the statutory authority contained in the Municipal Energy Agency Act and the Second Amended Agreement Creating this agency.

14) By-laws of the KPP may be proposed, modified or adopted as follows:

a) by majority vote of the Board of Directors;

b) by Motion from any voting member City of the KPP, subject to approval of a majority of the Board of Directors;

- c) by presentation to the Board by the CEO/General Manager subject to the approval of a majority of the Board of Directors.

15) The Board of Directors may amend and revise the List of KPP Cities, Exhibit 1, as necessary to correctly reference KPP membership.

16) The Cities who are or will become members of this Municipal Energy Agency are not liable for the obligations of the Agency.

17) In the event any paragraph of this Second Amendment to the Agreement Creating is found not to comply with Kansas statutes, the same may be deleted and the remaining portions of this Second Amendment to the Agreement Creating still control, unless such a deletion renders this Agreement incomplete.

18) This Second Amendment to the Agreement Creating constitutes the entire agreement of the parties and shall not be Amended, except in writing and in the manner provided by K.S.A. §12-889.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

APPROVAL OF THE
KANSAS POWER POOL (“KPP”), A MUNICIPAL ENERGY AGENCY

The Board of Directors of the Kansas Power Pool, meeting in the City of Wichita, Kansas on **February 19, 2015** unanimously passed and approved the Second Amendment to the Agreement Creating the Kansas Power Pool (“KPP”), a Municipal Energy Agency, by Resolution No. **2015-2-19a** and directed Mark Chesney, CEO and General Manager of KPP, to execute the Second Amendment to the Agreement Creating the Kansas Power Pool on behalf of the Kansas Power Pool (“KPP”), a Municipal Energy Agency.

Mark Chesney, CEO & General Manager
Kansas Power Pool

_____ day of _____, 2015

Jim Sutton, President of KPP

_____ day of _____, 2015

ATTEST:

Secretary of KPP

IN WITNESS WHEREOF, the City of _____, Kansas having passed the appropriate resolution to approve the Second Amendment to the Agreement Creating the Kansas Power Pool (“KPP”), a Municipal Energy Agency, is hereby executing this signature page by the City’s duly authorized officers.

The City’s corporate seal has been affixed hereto and this agreement is effective on the date of the passage of the resolution adopting the same, on the ___ day of _____, 2015.

THE CITY OF _____, KANSAS

By: _____

TITLE: _____

(SEAL)

ATTEST:

City Clerk

EXHIBIT 1

LIST OF KPP MEMBER CITIES

City	Transmission Service
Attica	MKEC
Augusta	Westar
Burlington	Westar
Clay Center	Westar
Ellinwood	MWE
Erie	Westar
Greensburg	MKEC
Haven	Westar
Hillsboro	Westar
Holyrood	MKEC
Kingman	MKEC
Lucas	MKEC
Luray	MKEC
Marion	Westar
Minneapolis	Westar
Mount Hope	Westar
Mulvane	Westar
Oxford	Westar
St. Mary's	Westar
Udall	Westar
Waterville	Westar
Wellington	Westar
Winfield	Westar