

RESOLUTION NO. 1944

A RESOLUTION OF THE CITY OF GARDNER, KANSAS, AUTHORIZING THE EXECUTION OF THE MARSHALL WIND FARM PROJECT RENEWABLE ENERGY POWER SALES AGREEMENT BETWEEN THE CITY OF GARDNER, 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 Gardner, 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 GARDNER, 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 ("Agreement") are unsubordinated obligations payable from all revenues derived from the City's electric utility system (the "**Utility Assets**" as defined within the "Agreement") 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. 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.

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 AssetsR.

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 Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

ADOPTED by the governing body of the City and signed by the Mayor this ____ day of February, 2016.

(SEAL)

CITY OF GARDNER, KANSAS

/s/ Chris Morrow
Chris Morrow, Mayor

Attest:

/s/ Jeanne Koontz
Jeanne Koontz, City Clerk

Approved as to form:

/s/ Ryan B. Denk
Ryan B. Denk, City Attorney