

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, 7:00 p.m.

MEETING #5064

CALL TO ORDER

ROLL CALL

INVOCATION BY Kurt Larson of Grace Community Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

Arbor Day Proclamation

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, April 3, 2017
2. Appropriation Ordinance No. 8, April 17, 2017
3. Cereal Malt Beverage License:
 - a. Lotus Garden Restaurant, 1202 E. Wyatt Earp Blvd.
4. Approval of Interlocal Cooperative Agreement with Gray County.
5. Approval of Eli Cook, Building Board of Appeals Advisory Boards.

ORDINANCES & RESOLUTIONS

Resolution No. 2017-13: A Resolution Authorizing the Offering for Sale of General Obligation Bonds, Series 2017-A, of the City of Dodge City, Kansas. Report by Assistant to Finance Director/Assistant to City Manager, Ernestor Delarosa.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of Guarantee Maximum Price for Bio Gas Project. Report by Director of Engineering, Ray Slattery.
2. Approval of Up-Graded Bio-Gas Sales Agreement with Kwik Trip. Report by Director of Engineering, Ray Slattery.
3. Approval of Firework Contract. Report by Parks & Recreation Director, Paul Lewis.
4. Approval of Proposals for Hazardous Tree Abatement. Report by Parks & Recreation Director, Paul Lewis.

OTHER BUSINESS

ADJOURNMENT



WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a resource of joy and spiritual renewal.

NOW, THEREFORE, I, Rick Sowers, Mayor of the City of Dodge City, Kansas, do hereby proclaim Friday, April 28, 2017, as



in the City of Dodge City and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

further, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Dated this 17th day of April, 2017

Mayor

ATTEST:

Nannette Pogue, City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, April 3, 2017

7:00 p.m.

MEETING #5063

CALL TO ORDER

ROLL CALL: Mayor Rick Sowers, Commissioners Brian Delzeit, Joyce Warshaw, Jan Scoggins and Kent Smoll.

INVOCATION by Kurt Larson of Grace Community Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

Mollea Wainscott presented the Fair Housing Proclamation. Mayor Rick Sowers proclaimed April as Fair Housing Month.

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

Brandon Hines, Librarian for the Dodge City Public Library, presented the Library quarterly report.

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, March 20, 2017;
2. Appropriation Ordinance No. 7, April 3, 2017;
3. Cereal Malt Beverage License:
 - a. Kwik Shop, Inc. #703, 1500 W. Wyatt Earp Blvd.
 - b. Kwik Shop, Inc. #762, 1811 Central Avenue.
 - c. Quick Pick, 2501 Central Avenue.

Commissioner Joyce Warshaw moved to approve the Consent Calendar as presented; Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

ORDINANCES & RESOLUTIONS

Ordinance No. 3653: An Ordinance establishing “No Parking” on Frontview Road from 14th Avenue to Loretta Avenue and Providing Penalties for Violation of the Provisions of this Ordinance with an amendment added to extend the no parking area to the east side of Loretta

Avenue, was approved on a motion by Commissioner Brian Delzeit. The motion was seconded by Commissioner Jan Scoggins. The motion carried 3-2 with Kent Smoll and Rick Sowers voting no.

Ordinance No. 3654: An Ordinance Establishing No Parking on Park Street from 5th Avenue to Santa Fe Avenue, on the North Side of the Road was approved on a motion by Commissioner Jan Scoggins. The motion was seconded by Commissioner Kent Smoll. The motion carried unanimously.

Ordinance No. 3655: An Ordinance of the City of Dodge City, Kansas amending the Official Zoning Map of the City, changing the Lots 1, 2, 11 & 12 of Block 31, Haggard's Addition, from R-S Residential Suburban, to R-3 Residential Higher Density was approved on a motion by Commissioner Jan Scoggins. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

Ordinance No. 3656: An Ordinance of the City of Dodge City, Kansas amending the Official Zoning Map of the City, changing the Described Property of the Wagon Wheel II Development, from R-S Residential Suburban, to R-1 Residential Low Density was approved on a motion by Commissioner Brian Delzeit. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

NEW BUSINESS

1. Commissioner Kent Smoll moved to approve the bid in an amount not to exceed \$77,000 from J-A-G Construction for Comanche Middle School Cross Walk improvements. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

OTHER BUSINESS

City Manager Cherise Tieben

Commissioner Kent Smoll

- Two weeks left in tax season, be nice to your accountant.

Commissioner Jan Scoggins

- Reminded the citizens that we have an excellent Newsletter published by Jane Longmeyer published weekly. Please subscribe to this newsletter;
- Thanked the library for hosting the activities that they host regularly.

Commissioner, Joyce Warshaw

- Attended Final Friday in Downtown Dodge City on Friday night. It was a lot of fun and the artist featured at the Carnegie Arts Center was wonderful.

Commissioner, Brian Delzeit

Mayor, Rick Sowers

ADJOURNMENT

Commissioner Jan Scoggins moved to adjourn the meeting; Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

Mayor

ATTEST:

City Clerk, Nannette Pogue

**INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**

(This form has been prepared by the Attorney General's Office)

City or County of DODGE CITY

SECTION 1 - LICENSE TYPE
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit
Check One: <input checked="" type="checkbox"/> License to sell cereal malt beverages for consumption on the premises. <input type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensee's premises.

SECTION 2 - APPLICANT INFORMATION		
Kansas Sales Tax Registration Number (required):		
Name <u>BILLY VO</u>	Phone No. <u>620-225-6348</u>	Date of Birth <u>2/21/55</u>
Residence Street Address <u>508 RUNYAN AVE.</u>	City <u>DODGE CITY</u>	Zip Code <u>67801</u>
Applicant Spousal Information		
Spouse Name <u>BICH LAM</u>	Phone No. <u>(620) 225-6348</u>	Date of Birth <u>4/5/60</u>
Residence Street Address <u>508 RUNYAN AVE</u>	City <u>DODGE CITY</u>	Zip Code <u>67801</u>

SECTION 3 - LICENSED PREMISE		
Licensed Premise (Business Location or Location of Special Event)	Mailing Address (If different from business address)	
DBA Name <u>LOTUS GARDEN CHINESE RESTAURANT</u>	Name	
Business Location Address <u>1202 E. WYATT CAMP BLVD</u>	Address	
City <u>DODGE CITY</u> State <u>KS</u> Zip <u>67801</u>	City	State Zip
Business Phone No. <u>(620) 227-7028</u>	<input checked="" type="checkbox"/> I own the proposed business or special event location. <input type="checkbox"/> I do not own the proposed business or event location.	
Business Location Owner Name(s) <u>BILLY VO</u>		

SECTION 4 - APPLICANT QUALIFICATION	
I am a U.S. Citizen	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of Kansas for at least one year prior to application.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have resided within the state of Kansas for <u>37</u> years.	
I am at least 21 years old.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of this county for at least 6 months.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Within 2 years immediately preceding the date of this application, neither I nor my spouse ¹ has been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.	<input type="checkbox"/> Yes Have <input checked="" type="checkbox"/> No Have Not
My spouse has previously held a CMB license.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
My spouse has never been convicted of one of the crimes mentioned above while licensed.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: City Commissioners
City Manager, Cherise Tieben

From: Fire Chief, Robert Heinz

Date: April 7, 2017

Subject: Cooperative Agreement with Gray
County

Agenda Item: New Business

Recommendation: Staff recommends the City Commission approve the Interlocal Cooperative Agreement for fire protection with Gray County.

Background: In the past the two parties have had an informal verbal agreement to come to each other's aid in the event that one could not contain or manage a fire or disaster by themselves. The purpose of this memo is to request your consideration of a formalized document spelling out each party's responsibilities in the event of activation.

Justification: The primary goal for seeking your approval of a formal Interlocal Cooperative Agreement for fire protection is to insure that both parties have an ongoing understanding of each other's responsibilities. This is important as leaders of organizations change verbal agreements can be forgotten. We never want to be put in a position of trying to determine what we can and can't do when people's lives are at stake.

Financial Considerations: Each party is responsible for their own equipment and personnel.

Purpose/Mission: The proposed request is consistent with the City's Core Purpose of "Together We Serve to Make Dodge City the Best Place to be". We also show good Kansas values of being there for our neighbors when they need our help.

Legal Considerations: This document will be filed with the appropriate agencies.

Attachments: Interlocal Cooperation Agreement for Fire Protection.

INTERLOCAL COOPERATION AGREEMENT FOR FIRE PROTECTION

AGREEMENT entered into this 31st day of March, 2017, by and between *the City of Dodge City, Kansas*, a duly organized municipal corporation of the State of Kansas (hereinafter referred to as "DODGE CITY"), and Gray County, Kansas, a duly organized municipal corporation of the State of Kansas (hereinafter referred to as "GRAY COUNTY").

WHEREAS, it is the purpose and policy of the parties named herein to provide the best and most efficient fire protection for the patrons of their respective areas; and

WHEREAS, it appears to be to the mutual benefit and advantage of the parties to enter into a mutual aid agreement, providing for cooperation and mutual use of firefighting forces and apparatus between the parties; and

WHEREAS, local governmental units are authorized to make the most efficient use of their powers by cooperating with other localities to provide services and facilities in a manner that will accord best with the needs and development of their communities, pursuant to the Interlocal Cooperation Act (K.S.A. 12-2901 et seq.).

NOW, THEREFORE, in consideration of the mutual benefits herein contained and of the mutual covenants running from one party herein to the other, it is mutually agreed as follows:

1. USE OF FIREFIGHTING FORCES AND APPARATUS: Whenever a fire occurs within the boundaries of a party to this Agreement and the aid of any other party to this Agreement is requested in combating and controlling such fire, a party, upon receiving a request for aid, shall respond with assistance of its personnel and use of its apparatus to the fullest extent in combating such fire or fires and in the protection of property and life endangered thereby.

It is understood and agreed by and between the parties hereto that all duties, obligations and responsibilities for fire protection between the parties are equal and mutual in all respects, and that the parties to this Agreement will cooperate in providing the most efficient and comprehensive mutual fire protection possible within the boundaries of each party to this Agreement when requested to do so, taking into consideration the geographical areas to be served and the equipment and apparatus available for fire protection.

2. PRIORITIES: If the firefighting personnel and equipment of a party being requested to respond are already engaged in fire protection activities at the time a call for assistance is received, that party shall not be under any obligation to the requesting party or to any other person or persons to furnish personnel and equipment therefore, unless the request is renewed after that party's equipment and personnel again become available to respond. The responding party may at any time withdraw its personnel and equipment for the purpose of responding to a fire call within its own boundaries, and no liability or obligation shall be incurred by a party for withdrawal for responding to a call within its own boundaries.

3. RESPONSIBILITIES AND CONTROL: The party responding to a call for assistance shall be responsible for delivering personnel and equipment to the location specified by the requesting party. On arriving at the location of the fire, the officer in charge of the personnel and equipment of the responding party shall report to the officer in charge of the requesting party. The requesting party shall then assume full charge, control, direction and supervision of all equipment, apparatus, and personnel dealing with the fire. In no case shall the responding party be required to assume the responsibility of the operation of, or attempting to control or deal with the fire. The responding party shall operate its own equipment.

If the officer in charge of the personnel or equipment of the responding party reasonably believes the personnel or equipment for which he/she is responsible are being subjected to unreasonable risk of injury or damage or are being required to perform beyond their capacity, limits, knowledge or training, he/she shall be entitled to withdraw such personnel and/or equipment after notifying the officer in charge of the requesting party at the scene.

INTERLOCAL COOPERATION AGREEMENT FOR FIRE PROTECTION

4. **COMPENSATION:** The parties shall at all time be responsible to their own employees for the payment of wages and other compensation and carrying of workers compensation and liability insurance, and each party shall be responsible for its own equipment and shall bear the risk of loss therefore irrespective of whether or not its personnel, equipment, and apparatus are being used in fighting a fire within the area of primary responsibility of the party or not. No party hereto shall be liable to any other party named herein for payment for use of its personnel and/or equipment under the terms of this Agreement.

6. **AUTHORIZED REPRESENTATIVES:** The Chief of the Fire Department of each party shall be an authorized representative of said Department and may designate such subordinates in their Department as they determine necessary to act as authorized representative in their absence. Each Chief shall provide their counterpart with a list of authorized representatives and phone numbers for contact purposes.

7. **TERM:** The term of this Agreement shall be perpetual.

8. **TERMINATION:** It is understood and agreed that either party hereto may terminate its participation and concurrent rights and duties under this reciprocal agreement by delivering to the other party hereto a notice of such termination, said notice to be in writing and to be given at least sixty (60) days prior to the termination date desired by the terminating party.

9. **LIABILITY:** The original employing party shall have and assume complete liability for all of the acts of its personnel and the operation of its equipment provided under this Agreement.

10. **MUTUAL HOLD HARMLESS:** The *DODGE CITY* agrees to indemnify and hold the *GRAY COUNTY* harmless from any and all liability, loss, damage or claims, of any description, which results from the negligence of the *DODGE CITY* and its employees, officers and/or agents that the *GRAY COUNTY* may suffer arising out of or in connection with this Agreement.

The *GRAY COUNTY* agrees to indemnify and hold the *DODGE CITY* harmless from any and all liability, loss, damage or claims, of any description, which results from the negligence of the *GRAY COUNTY* and its employees, officers and/or agents that the *DODGE CITY* may suffer arising out of or in connection with this Agreement.

12. **LIMITATION ON LIABILITY OF PARTIES:** The rights and benefits arising under this contract shall run to the parties to this Agreement and not to any person, firm, association, corporation or governmental unit not a party hereto. This Agreement is not to be construed to create a claim or cause of action in favor of any persons or entity entitled to protection by one city or fire district against any other city or fire district which is a party to this Agreement for failure to respond or for delay in responding to a request for assistance or for inefficiency or ineffectiveness in providing firefighting services.

13. **PRIOR AGREEMENTS:** All prior agreements for reciprocal fire protection, both oral and written, which may have been entered into previously between the parties to this Agreement, are to be terminated from this point forward, and the terms of this Agreement are controlling as to all the reciprocal rights and duties of the named parties in providing reciprocal fire protection between themselves..

14. **EFFECTIVE DATE:** This agreement shall take effect upon its approval by the City and County Commissions, the Attorney General of the State of Kansas, and recording of

INTERLOCAL COOPERATION AGREEMENT FOR FIRE PROTECTION

the agreement with the Ford County Register of Deeds office and in the office of the Kansas Secretary of State.

15. **BINDING EFFECT:** This agreement shall be binding upon and extend to the benefit of both City and County Commissions, and their respective successors and assigns.

16. **VENUE:** Should any dispute result in litigation concerning the validity or interpretation of this agreement, venue for such action shall be in the District Court of Ford County, Kansas.

17. **APPLICABLE LAW:** This agreement shall be governed by and interpreted in accordance with the laws of the State of Kansas.

18. **SEVERABILITY:** If any section, subsection or clause of this agreement shall be determined by a court of competent jurisdiction to be invalid for any reason whatsoever, such decision shall not affect the remaining provisions of this agreement, which shall remain in full force and effect.

19. **PROPERTY:** No property, real or personal, is to be jointly acquired pursuant to the terms of this agreement and upon the partial or complete termination of this agreement the parties will each retain the property in which said party holds title.

20. **PRESERVATION OF DEFENSES:** Neither party waives any rights or defenses available to it pursuant to the common law, statutes and constitutions of the United States and the State of Kansas by entering into this agreement and specifically retains all such rights and defenses.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

DATED this 31st day of March, 2017.

DODGE CITY, KANSAS:

GRAY COUNTY, KANSAS:

(Governmental Entity)

(Governmental Entity)

By _____
Its _____

By Mark Busel
Its Chairman

ATTEST:

Approved this ____ day of _____, 2017, by the Attorney General of the State of Kansas.

Office of Attorney General
Derek Schmidt

Assistant Kansas Attorney General

APPLICATION FOR CITY OF DODGE CITY ADVISORY BOARDS

NAME: Eli Cook OCCUPATION: General Contractor
ADDRESS: 10584 Knottingham Dr. TELEPHONE: 620 338-6034
E-MAIL: cookconstructiondc@gmail.com

Advisory Board(s) you wish to be considered for:

Building Board of Appeals

Tell us about your educational background:

School	Dates Attended	Major
<u>DCCC</u>	<u>1997-1998</u>	<u>General Studies</u>
<u>FHSU</u>	<u>1998-2002</u>	<u>Technology Studies / Secondary Ed</u>

Work history:

Job and Title	Dates of Employment
<u>Dodge City High School Shop/Drafting Teacher</u>	<u>2002-2004</u>
<u>Cook Construction Owner</u>	<u>2004-Present</u>

To the best of your knowledge, would the appointment of you to the Building Board of Appeals advisory board create any conflicts of interest due to your employment or business endeavors? If yes, please explain:

No

Have you ever served on any advisory board, committee, etc. of another public body? If you have, please tell us something about it.

No

Tell us about other qualifications you have which you feel qualify you for an appointment.

I'm born and raised in Dodge City and care about the future development of the area.

Signature: _____ Date: 4-7-17

Please return to: City Manager's Office, City Hall, P.O. Box 880, Dodge City, Kansas 67801-0880. Fax: 620-225-8144.
E-mail: melissam@dodgecity.org.

Thank you for your interest!

Memorandum

To: Cherise Tieben City Manager
From: Nannette Pogue
Date: April 7, 2017
Subject: Resolution No. 2017-13
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the City Commission approve Resolution No. 2017-13

Background: Resolution No. 2017-13 is a resolution that offers for sale general obligation bonds, series 2017-A of the City of Dodge City in the amount of \$2,945,000.

Included in this offering will be bonds to finance several street improvements including: Trail Street reconstruction near National Beef entrance, 1st Avenue reconstruction & waterline replacement, Arkansas River sediment removal, Market St., Soule St. & 6th Ave., Stormwater Improvements – Ave. K RCB design, 4th Ave. reconstruction, and 6th Ave. Extension. These improvements were previously approved by the City Commission.

This resolution also calls for a Notice of Bond Sale, which is approved in substantially the form presented to the Governing Body. It approves the Preliminary Official Statement, dated April 17, 2017 in substantially the form presented to the Governing Body. It directs the Finance Director in conjunction with the Bond Counsel to give notice of the bond sale by publishing a summary of the Notice of Bond Sale not less than 6 days before the date of the bond sale in the local newspaper and the *Kansas Register* and by distributing copies of the Notice of Bond Sale and Preliminary Official Statement to prospective purchasers of the Bonds. It also authorizes the Mayor and Director of Finance to execute the Financial Advisory Services agreement related to services to be provided by the Financial Advisor. The bonds are scheduled to close June 1, 2017.

Justification: The City is offering for sale the bonds and approving the Preliminary Official Statement and providing for notice of sale for the bonds.

Financial Considerations: The bonds will mature over 10 years.

Purpose/Mission: We strive for high service and performance standards

Legal Considerations: Legal obligations fulfilled by authorizing resolution.

Attachments: Resolution No. 2017-13. Preliminary Official Statement is available in Office of the Finance Director for review.

RESOLUTION NO. 2017-13

A RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION BONDS, SERIES 2017-A, OF THE CITY OF DODGE CITY, KANSAS.

WHEREAS, the City of Dodge City, Kansas (the “Issuer”), pursuant to laws of the State of Kansas, has previously authorized certain internal improvements described as follows (collectively the “Improvements”):

<u>Project Description</u>	<u>Ord./Res. No.</u>	<u>Authority (K.S.A.)</u>	<u>Project Cost</u>
Main Trafficway Improvements – Trail Street reconstruction near National Beef entrance	Ord. 3572/ Res. 2017-05	12-685 <i>et seq.</i>	\$ 250,000.00
Main Trafficway Improvements – 1 st Avenue reconstruction & waterline replacement	Ord. 3572/ Res. 2017-05	12-685 <i>et seq.</i>	500,000.00
Stormwater Improvements – Arkansas River sediment removal	Res. 2017-06	13-1024a/ Ch. Ord. 41	1,110,988.35
Street Improvements – Market St., Soule St. & 6 th Ave.	Res. 2017-06	13-1024a/ Ch. Ord. 41	300,000.00
Stormwater Improvements – Ave. K RCB design	Res. 2017-06	13-1024a/ Ch. Ord. 41	50,000.00
Street Improvements – 4 th Ave. reconstruction	Res. 2017-06	13-1024a/ Ch. Ord. 41	150,000.00
Main Trafficway Improvements – 6 th Ave. Extension ¹	Ord. 3087/ Res. 2016-15	12-685 <i>et seq.</i>	<u>1,600,000.00</u>
Total			\$3,960,988.35

¹ The Bonds will finance approximately \$560,000 of this project.

WHEREAS, the Issuer desires to issue its general obligation bonds in order to permanently finance the costs of such Improvements; and

WHEREAS, the City Commission of the Issuer (the “Governing Body”) hereby selects the firm of Stifel Nicolaus & Company, Inc., Wichita, Kansas (the “Financial Advisor”), as financial advisor for one or more series of general obligation bonds of the Issuer to be issued in order to provide funds to permanently finance the Improvements; and

WHEREAS, the Issuer desires to authorize the Financial Advisor to proceed with the offering for sale of said general obligation bonds and related activities; and

WHEREAS, one of the duties and responsibilities of the Issuer is to prepare and distribute a preliminary official statement relating to said general obligation bonds; and

WHEREAS, the Issuer desires to authorize the Financial Advisor and Gilmore & Bell, P.C., Wichita, Kansas, the Issuer’s bond counsel (“Bond Counsel”), in conjunction with the Director of Finance to proceed with the preparation and distribution of a preliminary official statement and notice of bond sale and to authorize the distribution thereof and all other preliminary action necessary to sell said general obligation bonds.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY, KANSAS, AS FOLLOWS:

Section 1. There is hereby authorized to be offered for sale the Issuer's General Obligation Bonds, Series 2017-A (the "Bonds") described in the Notice of Bond Sale, which is hereby approved in substantially the form presented to the Governing Body this date (the "Notice of Bond Sale"). All proposals for the purchase of the Bonds shall be submitted upon the terms and conditions set forth in the Notice of Bond Sale, and shall be reviewed by the City Manager, Director of Finance, the Financial Advisor, and Bond Counsel as soon after the submittal hour as possible. The Director of Finance is hereby authorized to award the sale of the Bonds to the submitter of the best proposal as determined pursuant to the provisions of the Notice of Bond Sale or to reject all proposals; provided, however, that the principal amount of the Bonds shall not exceed \$3,100,000 and the true interest cost of the Bonds shall not exceed 2.75%. All proposals for the purchase of the Bonds shall be delivered to the Governing Body at its meeting to be held on the date referenced in the Notice of Bond Sale, at which meeting the Governing Body shall review such proposals and ratify the award of the sale of the Bonds or the rejection of all proposals.

Section 2. The Preliminary Official Statement, dated April 17, 2017 (the "Preliminary Official Statement") is hereby approved in substantially the form presented to the Governing Body this date, with such changes or additions as the Mayor and Director of Finance shall deem necessary and appropriate, and such officials and other representatives of the Issuer are hereby authorized to use such document in connection with the sale of the Bonds.

Section 3. The Director of Finance, in conjunction with Bond Counsel, is hereby authorized and directed to give notice of said bond sale by publishing a summary of the Notice of Bond Sale not less than 6 days before the date of the bond sale in a newspaper of general circulation in Ford County, Kansas, and the *Kansas Register* and by distributing copies of the Notice of Bond Sale and Preliminary Official Statement to prospective purchasers of the Bonds. Proposals for the purchase of the Bonds shall be submitted upon the terms and conditions set forth in the Notice of Bond Sale, and awarded or rejected in the manner set forth in the Notice of Bond Sale.

Section 4. For the purpose of enabling the purchaser of the Bonds (the "Purchaser") to comply with the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"), the Mayor and Director of Finance are hereby authorized: (a) to approve the form of the Preliminary Official Statement and to execute the "Certificate Deeming Preliminary Official Statement Final" in substantially the form attached hereto as *Exhibit A* as approval of the Preliminary Official Statement, such official's signature thereon being conclusive evidence of such official's and the Issuer's approval thereof; (b) covenant to provide continuous secondary market disclosure by annually transmitting certain financial information and operating data and other information necessary to comply with the Rule to the Municipal Securities Rulemaking Board; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the Rule.

Section 5. The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 6. The Mayor, City Manager, Director of Finance, City Attorney and the other officers and representatives of the Issuer, the Financial Advisor and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to carry out the sale of the Bonds.

Section 7. The Mayor and Director of Finance are hereby authorized and directed to execute the Financial Advisory Services agreement related to services to be provided by the Financial Advisor.

Section 8. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

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ADOPTED by the City Commission on April 17, 2017.

(SEAL)

ATTEST:

Mayor

Clerk

EXHIBIT A

**CERTIFICATE DEEMING
PRELIMINARY OFFICIAL STATEMENT FINAL**

April 17, 2017

To:

Re: City of Dodge City, Kansas, General Obligation Bonds, Series 2017-A

The undersigned are the duly acting Mayor and Director of Finance of the City of Dodge City, Kansas (the "Issuer"), and are authorized to deliver this Certificate to the addressee (the "Purchaser") on behalf of the Issuer. The Issuer has previously caused to be delivered to the Purchaser copies of the Preliminary Official Statement (the "Preliminary Official Statement") relating to the above-referenced bonds (the "Bonds").

For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the "Rule"), the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be final as of its date, except for the omission of such information as is permitted by the Rule, such as offering prices, interest rates, selling compensation, aggregate principal amount, principal per maturity, delivery dates, ratings, identity of the underwriters and other terms of the Bonds depending on such matters.

CITY OF DODGE CITY, KANSAS

By: _____
Title: Mayor

SUMMARY NOTICE OF BOND SALE

\$2,945,000*

**CITY OF DODGE CITY, KANSAS
GENERAL OBLIGATION BONDS, SERIES 2017-A**

(GENERAL OBLIGATION BONDS PAYABLE FROM UNLIMITED AD VALOREM TAXES)

Bids. SUBJECT to the Notice of Bond Sale dated April 17, 2017 (the “Notice”), facsimile and electronic bids will be received on behalf of the Director of Finance of the City of Dodge City, Kansas (the “Issuer”) in the case of facsimile bids, at the address set forth below, and in the case of electronic bids, through *PARITY*[®] until 11:00 A.M. applicable Central Time, on **MAY 15, 2017** for the purchase of the above-referenced bonds (the “Bonds”). No bid of less than **99%** of the principal amount of the Bonds and accrued interest thereon to the date of delivery will be considered.

Bond Details. The Bonds will consist of fully registered bonds in the denomination of \$5,000 or any integral multiple thereof. The Bonds will be dated June 1, 2017, and will become due on September 1 in the years as follows:

<u>Year</u>	<u>Principal Amount*</u>
2017	\$180,000
2018	280,000
2019	285,000
2020	295,000
2021	300,000
2022	305,000
2023	310,000
2024	320,000
2025	330,000
2026	340,000

* Subject to change, see the Notice

The Bonds will bear interest from the date thereof at rates to be determined when the Bonds are sold as hereinafter provided, which interest will be payable semiannually on March 1 and September 1 in each year, beginning on September 1, 2017.

Book-Entry-Only System. The Bonds shall be registered under a book-entry-only system administered through DTC.

Paying Agent and Bond Registrar. Treasurer of the State of Kansas, Topeka, Kansas.

Good Faith Deposit. Each bid shall be accompanied (in the manner set forth in the Notice) by a good faith deposit in the form of a cashier’s or certified check drawn on a bank located in the United States of America or a wire transfer in Federal Reserve funds immediately available for use by the Issuer in the amount of \$[58,900].

Delivery. The Issuer will pay for preparation of the Bonds and will deliver the same properly prepared, executed and registered without cost to the successful bidder on or about **June 1, 2017**, to DTC for the account of the successful bidder.

Assessed Valuation and Indebtedness. The Equalized Assessed Tangible Valuation for Computation of Bonded Debt Limitations for the year 2016 is \$[_____]. The total general obligation indebtedness of the Issuer as of the Dated Date, including the Bonds being sold, is \$44,065,000.

Approval of Bonds. The Bonds will be sold subject to the legal opinion of GILMORE & BELL, P.C., WICHITA, KANSAS, Bond Counsel to the Issuer, whose approving legal opinion as to the validity

of the Bonds will be furnished and paid for by the Issuer, printed on the Bonds and delivered to the successful bidder as and when the Bonds are delivered.

Additional Information. Additional information regarding the Bonds may be obtained from the undersigned, or from the Financial Advisor at the addresses set forth below:

DATED: April 17, 2017.

Issuer – Good Faith Deposit Delivery Address:

City Hall
806 2nd Avenue
P.O. Box 880
Dodge City, Kansas 67801
Attn: Nannette Pogue, Director of Finance
Phone No.: (620) 225-8100
Fax No.: (620) 225-8144
Email: nannette@dodgecity.org

Financial Advisor – Facsimile Bid and Good Faith Deposit Delivery Address:

Stifel Nicolaus & Company, Inc.
301 N. Main, Suite 800
Wichita, Kansas 67202
Attn: Patricia A. Hinojos
Phone No.: (316) 337-8498
Fax No.: (316) 337-8492
Email: hinojosp@stifel.com

Memorandum

*To: City Manager
City Commissioners*

*From: Ray Slattery, P.E.
Director of Engineering Services*

Date: April 13, 2017

*Subject: Construction Agreement for Bio-Gas Upgrading
Facility GMP
SS 1601.*

Agenda Item: New Business

Recommendation: Approve GMP included in the Exhibits that will be included to the Agreement with UCI pending review by City Attorney and KDHE. The GMP for the Bio-gas Up-grading Facility is \$4,405,000.

Background: As you are well aware of, the city has been looking at utilizing the raw gas generated at the South WWTP in some fashion for a number of years now. The City is in the design of an Up-Grading Facility and has approved a purchase agreement with Guild Associates, Inc. for the up-grading equipment. At the December 19, 2016 Commission Meeting the Commission approved an agreement with UCI to determine a GMP for the construction of the upgrading facility. UCI has worked with staff, PEC and Guild to develop a GMP for the project from information provided by Guild, 30% designed plans and specifications by PEC, and their construction schedule.

Justification: This project is can be classified as a modified design build. With UCI's experience with the existing facility and knowing that timing of the construction is crucial; UCI will be able to schedule work to keep the WWTP functioning and get the Bio-Gas Up-Grading Facility operational in a timely manner. UCI can start work while the design is finalized and prior to delivery of equipment. By approving the GMP, UCI can start procurement of equipment, schedule their mobilization, and review up dated plans. UCI plans to mobilize to the site in mid-May and complete construction in early October.

Financial Considerations: The GMP within this agreement with UCI is for \$4,405,000.00. Funding of this project will be from the low interest loan the City has with KDHE. This loan was used to construct the Reclamation Plant and associated projects.

Purpose/Mission: The completion of this project will enable the City to sell the upgraded bio-gas generated at the South WWTP for another income source for the City.

Legal Considerations: The City is entering into an agreement with UCI and is bound by the provisions of this contract.

Attachments: The GMP/Construction Exhibits of the Agreement with UCI.

Exhibit A

Dodge City Bio-Gas Project

Guaranteed Maximum Price (GMP) @ 30% Design

Scoping Document

The proposed GMP for the Dodge City Bio-Gas Project was developed by the Design-Build team utilizing the following documents:

- Guild Equipment information from PEC on Feb. 7, 2017
- Preliminary plans provided by PEC for 30% design dated March 10, 2017.
- Specifications provided by PEC for 30% design dated March 10, 2017.
- Updated plan sheets dated March 16, 2017, 7 sheets; and March 28, 2017, 2 sheets.
- Pre-Construction Schedule (Attachment D)

Items included in the GMP include but are not limited to:

- Pre-construction services outlined in proposed contract including:
 - Management of GMP by developing and soliciting Bid Packages to vendors and subcontractors
 - Analyzing scopes and quotations from Vendors and Subcontractors
 - Meeting with City of Dodge City staff and PEC to discuss design, GMP and construction issues.
- All supervision, labor, equipment, materials and subcontractors to fulfill the work outlined in the documents listed above.
- Performance, payment and warranty bonds.
- Builders Risk Insurance on Guild Equipment after it is delivered to the site.
- Project warranty for 1 year.
- Temporary on site construction support facilities.
 - Construction trailer to house UCI-PEC on site personnel.
 - Construction staking.
 - Updating SWPP NOI-Temporary Erosion Control (Provided by PEC)
- On Site project management of either self-performed or subcontracted work.
 - Weekly progress meetings to include Owner, designer, contractors, subcontractors and any major vendors. These meetings will gauge the project's progress as well as look ahead schedules to make certain work is ready to be processed.
 - Overall safety for all site personnel will be planned and monitored by UCI personnel.
- Allowances, as the Design has not been completed, include as follows:
 - Pipe Painting - \$25,000
 - Pipe Insulation - \$30,000
 - Instrument Air Lines & Natural Gas Pilot Lines - \$35,000
 - Electrical, Instrumentation & Mechanical for the Mass300-IG Gas Analyzer - \$20,000.00
 - A Gas Analyzer (MAX300-IG) with spare parts & an Operator Training Course to be held in Pittsburg, PA. The City is responsible for all travel costs - \$154,000.00.

- Process equipment includes installation as well as the following:
 - Grouting of 4 skids with non-shrink grout
 - Operation and maintenance manuals on pumps supplied by UCI
 - Start-up will be by Guild and Associates Inc., UCI will provide Supervision for 10 days to facilitate this process.
 - UCI has included a crane for 10 days to unload & set Guild Equipment being furnished by the City of Dodge.
 - Commissioning Parts for the Bio-Gas Equipment from Guild Associates Inc.
- Permanent seeding of all disturbed areas on site.
- **A contingency is shown on the schedule of values that will be used to cover the costs of items not shown or included as the plans develop from 30% to 100%. Unused contingency is the property of Dodge City.**

Scope of Work for Electrical:

- Pricing includes coordination with the Utility Company for the establishment of a new service.
- Pricing includes all required electrical permits/fees.
- Pricing includes a complete installation of a 2000 kW Diesel Generator and 3000A Automatic Transfer Switch. Includes diesel fuel.
- Pricing includes provision and installation of electrical switchgear in the MCC building and in GHB1 and GHB2 including (1) Main Circuit Breaker, (1) Switchboard 'SB', (1) MCC-1, (1) Harmonic Filter, (1) Panel H, (1) Transformer T-L, (1) Panel L, (4) 20 hp VFDs for blowers.
- Pricing includes the Coordination Study and Start-up services.
- Pricing includes the provision of the MCC building. Building dimensions of 40'L X 10'W X 12'H
- Pricing includes power and control wiring to pre-wired GUILD equipment.
- Pricing includes GRC conduit systems due to classified areas. Appropriate fittings will be utilized for Class 1 Division 2 areas.
- Pricing includes provision and installation of (8) site pole lights.
- Pricing includes System Integrator including Network Rack, replacement of (1) pressure transmitter and (2) pressure switches, Blower VFD modifications and programming and start-up/testing.
- Pricing includes 3 Emergency Stop Switches

Exclusions

- Excludes connections for motorized gates (none identified)

Clarifications

- Sht. C1 of 14 make a reference to "Install transducer" with a reference to Sht. C9 Detail 2. It is unclear on the intent of this notification. Pricing is included to provide and install (1) new pressure transducer and (2) new pressure switches utilizing existing wiring/programming.
- Specification 26 29 13-18 #2 calls for automatic bypass control circuitry for VFDs. However, Sht. E1.2 Electrical Details, does not show this requirement. Pricing does not include this bypass control circuitry as this affects the overall sizing of each VFD and will involve a re-sizing of the entire MCC building if it is required. Pricing will increase as well, if required.

- Panel GP located in the generator enclosure to power the block heater and other miscellaneous generator loads. This is called out to be a 480V panel fed from SB-1. However the miscellaneous generator loads will be 120/208V circuitry. We have included pricing for miscellaneous loads to be connected to spare circuit breakers in Panel L.
- GUILD sheet 009 of 053 shows additional 120VAC Power Circuits from Distribution Panel to the MCC Interface Panel that are not included on the PEC Drawing set. We have included pricing for these additional circuits to be terminated to spare breakers in Panel L.
- GUILD sheet 013 of 053 shows control wiring between the MCC Interface Panel and “BOP Controls”. A location for this control panel has not been provided. We have allowed conduit and wiring installation of approximately 150’ from the MCC Interface Panel for this control wiring. Drawings do not indicate any power wiring or communications to this panel.
- Conduit systems will be Galvanized Rigid Conduit as it does not appear that the area classifications are considered corrosive. Class 1 Division 1 and Class 1 Division 2 classifications will be adhered to. It is noted that the only Class 1 Division 1 areas are located on a portion of the Product A Compressor Skid and a portion of the Molegate Skid.
- Sht. E4.1 of 11 says to “Connect Gas Analyzer as required” with no indication as to who is to provide this analyzer. We have consulted with RE Pedrotti who is able to provide this stand-alone analyzer for \$5,000. This pricing is included in our GMP.
- The 6 VFD’s in the MCC Building have been eliminated. Soft Starts will replace the (4) 18 pulse VFD’s and FVNR starters will replace the (2) 6 Pulse VFD’s.

Clarifications for Mechanical Work:

- ✓ Provide 10% X-ray to comply with B31.3 standards
- ✓ Provide Carbon Steel piping with corrosion coating and field taped fittings
- ✓ Provide Pipe Jeeping or Holiday Testing of all joints
- ✓ Mid Pressure Nitrogen Testing upto 200 PSI

Items Excluded in the GMP include but are not limited to:

- Sales Tax
- Permits
- Site Survey
- Quality control testing services
- Site utility charges for gas, water, electric or cable
- Chemicals for Bio-Gas Equipment
- Analytic or Isolation Equipment
- Any work associated with the Liquid Nitrogen Tank and Equipment. UCI will install the pad and bollards.
- Any process equipment or instrumentation needed for the Guild Bio-Gas equipment operations.

Exhibit B

Dodge City Bio Gas Facility 2017

Project Base GMP at 30%: \$4,405,000.00

Project Value Added Alternates not in the GMP

The following are for the access road and plant site:

- 6" sand-gravel surfacing in lieu of 4" as shown \$11,000.00
- 6" crushed concrete from Dodge City Sand in lieu of 4" sand-gravel \$30,000.00

Exhibit C

UCI Self Performed Work - Dodge City Bio Gas Facility 2017

UCI as the Construction Manager will self-perform and is not limited to the following items of work:

- Preconstruction Services
- Set up and manage temporary Site Facilities
- Construction layout
- Structural Excavation and Backfill
- Yard and Piping & Valves
- Structural concrete
- Process Equipment installation
- Facilitate start up by Guild & Associates Personnel
- On site management of subcontractors
- Documentation of Work
 - Submittals and shop drawing management
 - Changes in GMP/Scope
 - O&M Manuals
 - Start Up Documents
 - Training Documents
- Site Cleanup
- Punch List management

Exhibit D

Dodge City Bio-Gas Facility -- Schedule of Values

<u>Item Number</u>	<u>Description</u>	<u>Budget Cost</u>
1	General Expense/Mob/Demob	\$250,000.00
2	Site Work	\$310,000.00
3	Civil/Equipment Install	\$410,000.00
4	Pipe	\$510,000.00
5	Electrical	\$825,000.00
6	MCC Building/Switchgear	\$560,000.00
7	Generator	\$640,000.00
8	Mechanical	\$690,000.00
	Project Budget GMP	\$4,195,000.00
	Contingency	\$200,000.00
	UCI Pre-Construction Service	\$10,000.00
	Total GMP	\$4,405,000.00

Project Value Added Alternates not in base GMP

A	6" sand-gravel surfacing in lieu of 4" as shown	\$11,000.00
B	6" crushed concrete from Dodge City Sand in lieu of 4" sand-gravel	\$30,000.00
	Total w/Alternate A	\$4,416,000.00
	Total w/Alternate B	\$4,446,000.00

Deductive Alternates that the City may evaluate

C	Using crushed concrete for Foundation Base from Dodge City sand in lieu of AB-3 Material	(\$45,000.00)
D	Using asphalt millings supplied & delivered to the site from the City of Dodge in lieu of sand gravel	(\$14,000.00)



Line	ID	Activity Name	Duration	Start	Finish	2017											
						Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	J		
						10	1	22	12	3	24	14	4	25	16	6	27
1	0010	General Conditions	26w	Wed 04/05/17	Fri 10/06/17												
2	0011	Notice to Proceed		Wed 04/05/17	Wed 04/05/17												
3	0012	Mobilize	1d	Mon 05/15/17	Mon 05/15/17												
4	0013	Substantial Completion		Thu 09/21/17	Thu 09/21/17												
5	0014	Demobilize	1d	Thu 09/21/17	Thu 09/21/17												
6	0015	Final Completion		Fri 10/06/17	Fri 10/06/17												
7	020	BioGas	18w	Tue 05/16/17	Wed 09/20/17												
8	025	Site Work, Clear & Grub, Facility Rock	2w	Tue 05/16/17	Tue 05/30/17												
9	030	Concrete Foundations	4w	Wed 05/31/17	Tue 06/27/17												
10	035	Site Piping From Lagoons	8w	Wed 06/07/17	Wed 08/02/17												
11	040	Equipment Setting	2w	Mon 07/10/17	Fri 07/21/17												
12	041	Fence	3w	Wed 06/14/17	Wed 07/05/17												
13	045	Process Piping	10w	Wed 06/28/17	Wed 09/06/17												
14	050	Electrical	10w	Wed 06/28/17	Wed 09/06/17												
15	060	Checkout & Startup	2w	Thu 09/07/17	Wed 09/20/17												
16	1600	Engineering	4w	Wed 04/05/17	Tue 05/02/17												
17	1605	IFC Drawings	4w	Wed 04/05/17	Tue 05/02/17												
18	1700	Procurement	14w	Wed 04/05/17	Thu 07/13/17												
19	1705	Generator	14w	Wed 04/05/17	Thu 07/13/17												
20	1710	MCC Building	14w	Wed 04/05/17	Thu 07/13/17												
21	1715	Guild Equipment	13w 1d	Wed 04/05/17	Fri 07/07/17												

Memorandum

*To: City Manager
City Commissioners*

*From: Ray Slattery, P.E.
Director of Engineering Services*

Date: April 13, 2017

*Subject: Approval of Up-Graded Bio-Gas Sales
Agreement, SS 1601.*

Agenda Item: New Business

Recommendation: Approve the Sales Agreement of the Renewable Bio-Gas (RB) produced at the South WWTP. The Sales Agreement has been reviewed by the City's Fuel Marketer and City Attorney.

Background: At the February 20th Commission Meeting, the Commission approved the conditions of the Kwik Trip Sales Agreement. Kinect Energy Group (Kinect), has worked with Kwik Trip and the City to draft the agreement acceptable to both parties. As outlined in the conditions approved by the Commission, Kwik trip will purchase the RB at Market Price per MMBTU equal to the first of the Month Index Price and Kwik Trip will share in the sale of the of the environmental credits (RINS, Renewable Identification Number).

Justification: The Sales Agreement is another step in completing the Bio-Gas Project. With the agreement the City will have a buyer for the "Green Gas". Once approved, Kinect will have to draft and submit the necessary paper work with the EPA for the registration of our facility and the end user, Kwik Trip, to insure the gas is actually "Green Gas" and it is being used as a transportation fuel.

Financial Considerations: None at this time.

Purpose/Mission: The completion of this project will enable the City to sell the upgraded bio-gas generated at the South WWTP for another income source for the City.

Legal Considerations: The agreement will be binding upon the City.

Attachments: Base Contract, Special Provisions to the Contract, and Transaction for Conformation.

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: March 15, 2017

The parties to this Base Contract are the following:

PARTY A Dodge City, Kansas	PARTY NAME	PARTY B Kwik Trip, Inc.
P.O. Box 880, 806 N. 2nd Ave Dodge City, KS 67801	ADDRESS	1626 Oak Street P.O. Box 2107 La Crosse, WI 54602-2107
www.dodgecity.org	BUSINESS WEBSITE	www.kwiktrip.com
	CONTRACT NUMBER	
	D-U-N-S® NUMBER	05-903-9339
<input checked="" type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:
Kansas	JURISDICTION OF ORGANIZATION	Wisconsin
<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input checked="" type="checkbox"/> Other: City Government	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other:
	GUARANTOR (IF APPLICABLE)	
CONTACT INFORMATION		
TEL#: _____ FAX#: _____ EMAIL: _____	• COMMERCIAL	TEL#: _____ FAX#: _____ EMAIL: _____
TEL#: _____ FAX#: _____ EMAIL: _____	• SCHEDULING	TEL#: _____ FAX#: _____ EMAIL: _____
TEL#: _____ FAX#: _____ EMAIL: _____	• CONTRACT AND LEGAL NOTICES	TEL#: _____ FAX#: _____ EMAIL: _____
TEL#: _____ FAX#: _____ EMAIL: _____	• CREDIT	TEL#: _____ FAX#: _____ EMAIL: _____
TEL#: _____ FAX#: _____ EMAIL: _____	• TRANSACTION CONFIRMATIONS	TEL#: _____ FAX#: _____ EMAIL: _____
ACCOUNTING INFORMATION		
TEL#: _____ FAX#: _____ EMAIL: _____	• INVOICES • PAYMENTS • SETTLEMENTS	TEL#: _____ FAX#: _____ EMAIL: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	WIRE TRANSFER NUMBERS (IF APPLICABLE)	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____
ATTN: _____ ADDRESS: _____	CHECKS (IF APPLICABLE)	ATTN: _____ ADDRESS: _____

Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

<p>Section 1.2 Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written</p>	<p>Section 10.2 Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____</p>
<p>Section 2.7 Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> _____ Business Days after receipt</p>	
<p>Section 2.8 Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer</p>	
<p>Section 3.2 Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard</p>	<p>Section 10.3.1 Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply</p>
<p>Note: The following Spot Price Publication applies to both of the immediately preceding.</p>	
<p>Section 2.31 Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____</p>	<p>Section 10.3.2 Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply</p>
<p>Section 6 Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point</p>	
<p>Section 7.2 Payment Date <input checked="" type="checkbox"/> 25th Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery</p>	<p>Section 15.5 Choice Of Law <b style="text-align: center;">Kansas</p>
<p>Section 7.2 Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check</p>	<p>Section 15.10 Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply</p>
<p>Section 7.7 Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply</p>	
<p><input checked="" type="checkbox"/> Special Provisions Number of sheets attached: <u>Two (2) pages</u> <input type="checkbox"/> Addendum(s): _____</p>	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

Dodge City, Kansas	PARTY NAME	Kwik Trip, Inc.
	SIGNATURE	
	PRINTED NAME	Joel Hirschbrenk
	TITLE	GM - Fuel

General Terms and Conditions

Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

- 2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.
- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate

amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.

2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.

2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.

2.31. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.

2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next

following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or (ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend

the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

Bilateral Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

Triangular Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**



TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, _____ Transaction Confirmation #: _____	
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.		
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	
Contract Price: \$ _____/MMBtu or _____		
Delivery Period: Begin: _____, _____ End: _____, _____		
Performance Obligation and Contract Quantity: (Select One)		
Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):		
Special Conditions: _____ _____ _____		
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____	

**SPECIAL PROVISIONS TO THE NAESB
BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

These Special Provisions to the NAESB Base Contract for Sale and Purchase of Natural Gas (these "Special Provisions") are attached to and made a part of that certain Base Contract for Sale and Purchase of Natural Gas between **Dodge City, Kansas and Kwik Trip, Inc.**, dated **March 15, 2017** (the "Base Contract").

The parties hereto agree that (i) references to Sections in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract; and (ii) these Special Provisions amend the Base Contract as of the date of the Base Contract. In the event of any conflict or inconsistency between the Special Provisions and the Base Contract, the Special Provisions shall govern. All capitalized terms and section references used in these Special Provisions but not defined herein shall have the respective meanings ascribed to them in the Base Contract.

1. Section 1.2 "Oral Transaction Procedure" is amended by adding the phrase "or other electronic means of communication" immediately after the phrase "EDI transmission" in the second sentence.

2. The following shall be added as Section 1.5:

"1.5. No Transaction Confirmation shall be necessary for a transaction with a term of less than one month unless specifically requested by a party. In the event that neither party requests a Transaction Confirmation for a transaction with a term of less than one month, the parties agree that for such transaction, the recorded transaction described in Section 1.4 of the Base Contract shall be evidence of such transaction."

3. Section 2.12 "Cover Standard" is amended by deleting the words "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" in the third line of Section 2.12 ("Cover Standard").

4. Section 10.2 is amended by deleting the word "or" preceding clause (ix) therein and inserting the following immediately after the semicolon at the end of clause (ix):

"or (x) consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such party under the Contract."

5. Section 10.3 is amended by adding the following at the end of the section:

"IN ADDITION TO ALL OTHER AMOUNTS CALCULATED HEREUNDER, BUT WITHOUT DUPLICATION, THE DEFAULTING PARTY SHALL REIMBURSE THE NON-DEFAULTING PARTY FOR REASONABLE OUT-OF-POCKET EXPENSES INCURRED BY THE NON-DEFAULTING PARTY IN TERMINATING AND LIQUIDATING THE TERMINATED TRANSACTIONS AND ANY RELATED HEDGES, SUCH AS TRANSPORTATION AND STORAGE COSTS, BROKERAGE FEES, COMMISSIONS AND OTHER TRANSACTIONAL COSTS (INCLUDING ANY COSTS OR LOSSES INCURRED BY THE NON-DEFAULTING PARTY AS A RESULT OF HAVING ENTERED INTO HEDGING TRANSACTIONS OR HAVING TO ENTER INTO ANY REPLACEMENT HEDGING TRANSACTIONS, AND ANY AND ALL COSTS OF MAINTAINING, TERMINATING AND/OR REESTABLISHING ANY HEDGE OR RELATED TRADING POSITIONS, IN EACH CASE DISCOUNTED TO PRESENT VALUE OR BEARING INTEREST, AS APPROPRIATE, AND IN EACH CASE DETERMINED BY THE NON-DEFAULTING PARTY IN A COMMERCIALY REASONABLE MANNER), AS WELL AS REASONABLE ATTORNEYS' FEES AND EXPENSES AND OTHER ADMINISTRATIVE, TRANSPORTATION, AND BROKERAGE FEES OR COSTS INCURRED BY THE NON-DEFAULTING PARTY DURING THE OCCURRENCE AND CONTINUATION OF AN EVENT OF DEFAULT IN CONNECTION WITH THE ENFORCEMENT OR THE PRESERVATION OF THE NON-DEFAULTING PARTY'S RIGHTS UNDER THIS CONTRACT."

6. Section 10.5 is amended by adding the following sentences:

"Each party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding involving such party. The parties agree that this Contract is a "forward contract" as defined in 11 U.S.C. Section 101 and, if either party becomes subject to a bankruptcy proceeding, it is understood and agreed by the parties that the other party is and shall be entitled to exercise its rights as a "forward contract merchant" to liquidate this Contract as a "forward contract" under Section 556 of the U.S. Bankruptcy Code."

7. Section 15 is amended by adding the following to Section 15.5:

"Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to these special provisions, the Contract, or any transaction thereunder."

8. Section 15 is amended by adding the following after the last sentence of 15.8:

"On the effective date and the date of entering into each transaction hereunder, each party represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all regulatory authorizations necessary for it to legally perform its obligations under this Contract and each transaction hereunder; (ii) the execution, delivery and performance of this Contract and each transaction hereunder are within its powers, and do not violate any contracts to which it is a party or any law, rule, regulation, order; (iii) this Contract, each transaction hereunder, and each other document executed and delivered in accordance with this Contract constitutes a legally valid and binding obligation enforceable against it in accordance with the terms of said document, subject to any equitable defenses; (iv) it, or its credit support provider, if applicable, is not bankrupt and there are no proceedings pending or being contemplated by it, its credit support provider, if any, or, to its knowledge, threatened against it which would result in it

being or becoming bankrupt and there is not pending or, to its knowledge, threatened against it, or its credit support provider, if any, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Contract and each transaction hereunder; (v) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Contract and each transaction hereunder; (vi) it is acting for its own account, has made its own independent decision to enter into this Contract and each transaction hereunder and as to whether this Contract and each such transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract and each transaction hereunder; (vii) it is an "eligible contract participant" as that term is defined in Section 1a(12) of the Commodity Exchange Act."

9. The following new Section 15.13 is added:

"If requested, a party shall deliver its or its credit support provider's audited (or certified consolidated unaudited) financial statements at within the lesser of the following a) 90 days of the most recent reporting quarter or b) 20 days of their preparation, such completion not to exceed 120 days after the most recent reporting quarter. The parties agree that to the extent a party's financial statements are publicly available, such public provision shall satisfy the requirements of this section."

10. The following new Section 15.14 is added:

"To the extent, if any, that a transaction does not qualify as a "first sale" as defined by the Natural Gas Act and §§ 2 and 601 of the Natural Gas Policy Act, each Party irrevocably waives its rights, including its rights under §§ 4-5 of the Natural Gas Act, unilaterally to seek or support a change to any terms and conditions of the Contract, including but not limited to the rate(s), charges, or classifications set forth therein. By this provision, each Party expressly waives its right to seek or support, either directly or indirectly, and by whatever means: (i) an order from the U.S. Federal Energy Regulatory Commission ("FERC") seeking to change any of the terms and conditions of the Contract agreed to by the Parties; and (ii) any refund from the other Party with respect to the Contract. Each Party further agrees that this waiver and covenant shall be binding upon it notwithstanding any regulatory or market changes that may occur after the date of the Contract or any transaction entered into between the Parties. Absent the agreement of both Parties to the proposed change, the standard of review for changes to any terms and conditions of the Contract proposed by (a) a Party, to the extent that the waiver set forth in this Section 15.13 is unenforceable or ineffective as to such Party due to a final determination being made under applicable law that precludes the Party from waiving its rights to seek or support changes from the FERC to the terms and conditions of this Contract, (b) a non-party, or (c) the FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra Doctrine"), as the Mobile-Sierra Doctrine has been clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 128 S.Ct. 2733 (2008)."

11. The following new Section 15.15 is added:

"Each party represents to the other party (with such representations deemed to be repeated by each party on each date on which a relevant transaction is entered into) that, with respect to any commodity option transaction, it is: (1) a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the option transaction; (2) offering or has been offered or is entering into the transaction solely for purposes related to its business as such; and (3) intends to make or take, as applicable, physical delivery of the commodity if the option is exercised."

IN WITNESS WHEREOF, the parties have executed these Special Provisions, which may be executed in multiple counterparts, but which shall constitute one and the same instrument, effective as of the date first written above.

DODGE CITY, KANSAS

KWIK TRIP, INC.

By: _____

By:  _____

Name: _____

Name: Saul Hirsch

Title: _____

Title: GM - Fuel

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

Dodge City, Kansas	Effective Date : ____ __, 2016 2017
<p>This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation shall be binding upon execution by the parties.</p>	
<p>SELLER: Dodge City, Kansas P.O. Box 880, 806 N. 2nd Ave Dodge City, KS 67801 Attn: Phone: Fax:</p>	<p>BUYER: Kwik Trip, Inc. 1626 Oak Street P.O. Box 2107 La Crosse, WI 54602-2107 Attn: Phone: FAX:</p>
<p>Contract Price: The price per MMBtu shall be equal to the First of the Month Index Price for Monthly Deliveries into Northern Natural Gas (NNG) as published by the McGraw-Hill Companies, or any successor-in-interest thereto, in the Platt publication, <i>Inside FERC Gas Market Report</i>, first of month publication, under the table "Prices of Spot Gas Delivered to Pipelines", for the delivery Month under the column "Index", under the table Northern Natural Gas Co., in the row labeled Demarcation, less transportation costs from Dodge City's NNG interconnect to NNG demarcation, plus-less 8% of net RIN revenues (net RIN revenues defined as gross revenue from the sale of Renewable Identification Numbers ("RINS") generated from the RB sold hereunder pursuant to the Federal Renewable Fuel Standard 2 ("RFS2") as amended less program costs).</p>	
<p>Delivery Period: The "Delivery Period" shall be, with respect to RB deliveries from the Project, for a term of five (5) years from the date of commercial production.</p>	
<p>Performance Obligation and Contract Quantity: Subject to the Special Conditions set forth below, Buyer shall purchase all RB produced from the Project for each Day of the Delivery Period up to the MDV (as defined below):</p>	
<p>Firm (Fixed Quantity): ____ <u>0</u> MMBtus/day</p>	<p>Firm (Variable Quantity): x (Subject to the Special Provisions) <input type="checkbox"/> EFP</p>
<p>Interruptible:</p>	
<p>Delivery Point(s): RB being sold hereunder from the Delivery Points shall be Seller's interconnection with NNG at the Project. Buyer and Seller agree that Seller is solely responsible for all transportation and related pipeline charges, if any, for the transportation of RB to the Delivery Point(s) and Buyer is solely responsible for all transportation and related pipeline charges for the transportation of the RB at and from the Delivery Point(s), if any.</p>	
<p>Special Conditions:</p> <p>Product: Renewable Biogas (RB)</p> <p>Purpose of Transaction Confirmation</p> <p>The purpose of this Transaction Confirmation is to sell and purchase RB derived from the Dodge City, KS Waste Water Treatment Plant (WWTP) as produced by Seller at the Project (s) in order to generate RINS in compliance with EPA rules and regulations.</p> <p>Definitions and General Terms and Conditions:</p> <p>Seller agrees to sell to Buyer at the Delivery Point, and Buyer agrees to purchase from Seller at the Delivery Point and sell for utilization as a transportation fuel, 100% of the available volumes up to the MDV of RB as described herein.</p> <p>"Project(s)" means the WWTP gas processing facilities owned and operated by the City of Dodge City, Kansas in Dodge City,</p>	

Kansas (the "WWTP").

Maximum Daily Volume ("MDV"): MDV is 2,000 MMBtu.

Seller shall have no firm or interruptible minimum quantity requirements.

If additional volumes of RB from the Project becomes available not otherwise committed to another party and Buyer has determined a need for additional RB to be utilized as a transportation fuel, the parties agree to work in good faith to discuss mutually available terms for additional volumes of RB to be supplied to Buyer.

Buyer shall arrange for the use the RB as a transportation fuel in compressed natural gas and/or liquefied natural gas form.

"Renewable Biogas" ("RB") means Gas production from the Project that:

- (i) is pipeline quality gas meeting the standards of 40 CFR 72.2 generated from the conversion of raw WWTP biogas (being a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure that is produced through the conversion of organic matter present in the WWTP) at biogas processing facilities located at the WWTP compressed to more than 1 psi and injected into a commercial distribution system at the pressure required for injection by the distribution system; and
- (ii) contains all the environmental attributes associated with the use of a pipeline quality WWTP gas-derived fuel for transportation use, but excluding (a) any federal or state tax credits associated with the collection, production, transfer or sale of such WWTP gas, (b) any emission reduction credits required or available for the operation of a WWTP gas processing facility at the WWTP to convert collected raw WWTP biogas to pipeline quality gas standards, and (c) any credits or payments associated with the capture and destruction of methane or the reduction in or avoidance of Greenhouse Gas emissions at the WWTP, including emission reduction credits, verified emission reductions, voluntary emission reductions, offsets, allowances, voluntary carbon units, avoided compliance costs, emission rights and authorizations, and CO2 reduction and sequestration. For purposes hereof, "Greenhouse Gas" means carbon dioxide (CO2), methane (CH4), nitrous oxide (NO2), hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substance or combination of substances that may become regulated or designated as Greenhouse Gases under any federal, state or local law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for Greenhouse Gas emission reductions that is established, certified, maintained, or recognized by any international, governmental (including U.N., federal, state, or local agencies), or non-governmental agency from time to time, in each case measured in increments of one metric ton of carbon dioxide equivalent. For avoidance of doubt if any of the above excluded environmental attributes are deemed to be associated with the creation of a Renewable Identification Number (RIN) under the Federal Renewable Fuel Standard 2 ("RFS 2") as amended, such attributes shall instead of being excluded will be included in RB.

Additional Representations, Warranties and Covenants:

In addition to the representation and warranties set forth in the Base Contract, and notwithstanding any disclaimers of warranties set forth therein, Seller represents and warrants that (i) all Gas delivered to Buyer for purchase hereunder shall be RB; (ii) Seller has not sold or agreed to sell and will not during the term of the Base Contract sell or agree to sell the environmental attributes associated with the RB to any other party nor agreed to sell and will not agree during the term of the Base Contract to sell any RB from the Project up to the MDV actually sold to Buyer to any third party who would use the RB for transportation use or the creation of Renewable Identification Numbers issued pursuant to under the EPA's RFS 2 or any state program of similar nature; and (iii) it holds the right to all RB and environmental attributes hereunder prior to delivery.

Each party covenants not to enter into a contract with a third party that will create RINs which would be duplicative to RINs created herein or otherwise double count RINs produced as part of the Project.

Each party agrees to indemnify, defend and hold harmless the other party and its affiliates from all Claims arising out of such party's breach of the representations and warranties set forth in this Confirmation

The parties agree, at their own cost, to provide, produce and/or file such internally generated reports, generation and usage reports, information and affidavits and to retain all records for audit and inspection as may be required by any applicable state or federal program related to the use of RB for that program including without limitation the RFS2.

Additional Event of Default:

For the purposes of this Transaction Confirmation only, the failure of a party to perform a material obligation hereunder or the breach of a representation or warranty hereunder, shall constitute an additional Event of Default under the Base Contract, and any termination rights arising therefrom shall be in addition to any other remedies hereunder available to the Non-Defaulting Party.

RIN Credits:

Buyer hereby assigns to Seller all rights, title and interest to all RINs produced or generated as a result of utilization of RB as transportation fuel in return for Seller remitting to Buyer 8% of the monetized value of RINs sold by Seller, ~~less any documented reasonable third party program costs required to verify, audit and otherwise monetize the RINs.~~

Seller shall be responsible for registering, aggregating and marketing RINs through the applicable avenues required by the RFS2. By the 10th day of the month following the sale of the RINs, Buyer will receive an accounting of the RB sold by Seller, RIN credits generated, registered and sold as well as any RB held in storage. Buyer will receive its applicable share as set forth above by the 25th day of the month following the month in which said RINs are sold by Seller.

Additional Termination Rights:

- **By Either Party:**

Either party may terminate this Transaction for a breach of any provisions stated in this Confirmation or the Base Contract that is not cured after 30 days written notice provided to the breaching party.

Either party may terminate this Transaction due to a change in law or regulations that render the RB sold hereunder ineligible to generate RINs.

Change in Law:

In the event the Environmental Protection Agency issues any regulations or rules that alter a party's responsibilities under this Transaction, then the parties agree to work in good faith for a period of 45 days (if allowable by law) to amend this Transaction to reflect such changes; provided, however, that the economic terms of the Transaction shall remain the same; and provided further that in the event the parties are unable to amend this Transaction to accomplish the same economic result for Seller, Seller may terminate this Transaction without penalty and such termination shall not be considered an Event of Default.

Seller: City of Dodge City, KS

By: _____

Title: _____

Date: _____

Buyer: Kwik Trip, Inc

By:  _____

Title: GM - Fuel

Date: 3-23-17



Parks and Recreation

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: Cherise Tieben, City Manager
City Commissioners

From: Paul Lewis, Director 

Date: April 12, 2017

Subject: Fireworks Contract

Agenda Item: New Business

Recommendation: Staff requests Commission approval to enter into contract with Wald's All American Display Fireworks in the amount of \$25,000 for the July 4th fireworks show. The contract for 2017 is a one year agreement for the July 4 display.

Background: Wald's has provided all of the fireworks shows for the Old Dodge City event since we first started in 1998 with this being the 20th year. They have provided well designed shows, choreographed with music that has developed Dodge City's reputation as a premier show in the state.

Again this year the July 4th committee is working to coordinate with other agencies and organizations to promote activities planned for the day and then culminate with the fireworks show at 10pm that night. The show will be shot from Morgan Blvd and USD 443 will allow us to use Memorial Stadium for spectator viewing.

Justification: The Dodge City show is the largest display in western Kansas and local response is overwhelmingly positive. This show draws people into the community from all around the area and several thousand people line the streets and parking areas around north Dodge to view the display.

Wald's has provided excellent service and quality displays for the event since its inception. The planning committee has met and recommends to continue contracting with Wald for the display.

Financial Considerations: The contract for this show is \$25,000. Of the total expense, the City covers \$5,000 from the Non-Departmental budget. The remainder is raised by the local fireworks committee through corporate and individual sponsors. The committee is already working towards that goal and is sending out solicitation letters. The group has also developed some additional fund raising strategies to support the program.

Purpose/Mission: The City's support of this program is consistent with the mission of the City to improve quality of life as it enhances a community wide event celebrating our history and providing entertainment for our citizens.

Legal Considerations: Liability issues with this activity are covered by Wald & Co. through a certificate of insurance with a coverage limit of \$5,000,000 for public liability and property damage.

Attachments: Wald Contract

Wald & CO., Inc. d/b/a All American Display Fireworks

PO Box 319, Greenwood, Missouri 64034-0319

Phone: 816-537-7400 Fax: 816-537-7270 E-mail: sales@waldfireworks.com

This agreement entered into this 17 day of March, 2017 by and between Wald & Co., Inc. of Greenwood, Missouri, doing business as All American Display Fireworks, (hereinafter referred to as "All American") party of the first part, and City of Dodge City (hereinafter referred to as "Customer") party of the second part
City of Dodge City And State of Kansas.

WITNESSED: All American, for and in consideration of the sum of one dollar (\$1.00) in hand paid, receipt of which is hereby acknowledged and of terms and conditions hereinafter set forth, agrees to furnish Customer As Proposal Dated: 3/16/17 fireworks display in accordance with the program agreed upon and approved by the parties hereto and made a part of this agreement hereof, (hereinafter referred to as "Display") with said Display to be performed on Tuesday, July 04, 2017.

All American agrees to provide services and deliver fireworks as proposed. All American reserves the right to make necessary Substitutions with product equal to or greater in value.

All American will submit applications for approval of permits for the Display and any rescheduled date from the Authority Having Jurisdiction (hereinafter referred to as "AHJ"), refusal of the AHJ to approval permits will not constitute a breach of contract on All American.

Customer shall:

1. Furnish sufficient minimum secured safety distances in the judgment of All American for proper shooting of Display.
2. Provide necessary police protection and/or adequate security and a method to maintain and assure that spectators not go past the minimum Secured safety distances determined by All American. Cancellation or postponement of Display due to breach of said minimum secured Safety distances does not constitute a breach of this agreement by All American.
3. Provide other reasonable safeguards and precautions as All American directs or deems necessary
4. Provide unobstructed and safe access to the display site/fall out zone, as All American deems necessary. If set up is delayed or Display is postponed or cancelled due to Customer not providing unobstructed and safe access to the the display site/fall out zone, it will not constitute a breach of this agreement by All American. Customer will be responsible for any and all additional costs associated with the unobstructed and safe access for set up.
5. Provide fire protection as All American deems necessary
6. If program is delayed one or more nights and set up will remain intact, Customer shall provide 24-Hour security for the display site at no cost to All American. If Customer fails to provide such security, Customer agrees to reimburse All American for any and all costs associated in acquiring the security of the material and display site.
7. Contact the Greenwood office for approval of any changes in site location or site access. Customer acknowledges that all changes must be approved by All American and the permit issuing AHJ. Failure to obtain approval from the AHJ will not constitute a breach of this agreement by All American and Customer will be responsible for the total sum of the agreement

Insurance

All American will provide the Customer with a \$5,000,000 Certificate of Insurance covering Public Liability and Property Damage for Display. Customer will be included as additional insured and agrees to provide a complete list of all additional insureds to be named on the certificate. By signing contract, Customer accepts all insurances provided by All American. If Customer requires an Accord, the Customer will be responsible for all costs associated with this request.

Cancellation

If Customer cancels the Display prior to the fireworks crew starting the set-up of the Display and does not reschedule, Customer agrees to pay fifty percent (50%) of the total sum of this agreement

If Customer cancels the Display once the fireworks crew has started the set-up of the Display, and does not reschedule Customer agrees to pay the total sum of this agreement.

If All American cancels the Display in the event of: inclement weather, adverse conditions, life/safety issues, AHJ cancellation, or some other cause beyond All American's control that would prevent the giving of Display on the specified date, Customer may reschedule with All American to a mutually agreed upon Display date to be held within 180 days of the original display date. If Customer does not reschedule to a mutually agreed upon Display date, Customer agrees to pay the total sum of this agreement.

Rescheduling

If **Customer** cancels and reschedules the **Display** prior to the fireworks crew leaving **All American** warehouse, **Customer** agrees to pay the total sum of this agreement/proposal, plus any new permit fee costs for such rescheduling.

If **Customer** cancels and reschedules the after the fireworks crew leaves **All American** warehouse, **Customer** agrees to pay the total sum of this agreement/proposal, plus up to ten percent (10%) of the sum of the agreement for rescheduling cost, plus any ~~new permit fee costs for such rescheduling.~~

If **Customer** cancels and reschedules the **Display** after the set-up has started, **Customer** agrees to pay the total sum of this agreement/proposal, plus up to forty percent (40%) of the sum of the agreement for rescheduling cost, plus any new permit fee cost for such rescheduling or cost.

It is agreed and understood that **Customer** may reschedule the **Display** within 180 days of the original **Display** date and that ~~Customer must notify All American at least 30 days in advance of proposed rescheduled date.~~ Rescheduled **Display** date and location must be mutually agreed upon by **All American** and **Customer**. If the rescheduled date falls within the 30 days following original **Display** date, the 30-day notice can be suspended, but the new date and location must be mutually agreed upon by **All American** and **Customer**. Any display date other than the original scheduled **Display** date is considered rescheduling.

If "See Proposal" is noted, **Customer** must refer to the proposal for all any additional cancellation/postponement requirements.

Payment

It is further agreed and understood that the **Customer** will pay **All American** the total sum of \$ 25,000.00 for the **Display** as follows: Balance due in full by 7-10-17

Customer agrees to pay one and one half percent (1.5%) interest charged per month on unpaid accounts after one day from noted payment due date and **Customer** agrees to pay all fees necessary to collect balance due, in addition to any and all attorney fees. All accounts 30 days past due will be automatically turned in for collection.

It is further agreed that nothing in this Agreement between **Customer** and **All American**, shall be construed or interpreted to result in a partnership or joint venture, both parties hereto being responsible for their separate and individual acts, omissions, debts, and obligations and neither party shall be responsible for any agreements, proposal or addendum not set forth in this Agreement. The parties hereto do mutually and severally guarantee terms, conditions, and payments of this agreement which is binding upon the parties, their heirs, executors, administrators, successors, assigns, and agents; as well as terms and conditions further set forth by **All American**.

IN WITNESS WHEREOF, we hereto, set our hands and seals to duplicate copies hereof this the 17 day of March 2017.

WALD & CO., INC./ALL AMERICAN DISPLAY FIREWORKS

CUSTOMER

BY: Charles Wald
Print Name of Authorized Agent

BY: _____
Print Name of Authorized Agent

SIGN: _____
Signature of Authorized Agent

SIGN: _____
Signature of Authorized Agent

This agreement subject to acceptance by All American (Wald & Co., Inc.) at its main office at Greenwood, Missouri. IMPORTANT: Place authorized signature on original (white) and return to All American Display Fireworks by return mail. Retain duplicate (yellow) copy for your files.

Wald & CO., Inc. and All American Display Fireworks

Since 1924

PO Box 319, Greenwood, Missouri 64034

Phone: 816-537-7400 Fax: 816-537-7270

Email: sales@waldfireworks.com Website: www.waldfireworks.com

FIREWORKS DISPLAY PROPOSAL FOR DODGE CITY KANSAS

17qwka1.1

DISPLAY DATE	7/4/2017
PROPOSAL DATE	3/16/2017
BOOKING DEADLINE	5/1/2017
BUDGET	\$25,000.00

MAIN AERIAL

92 SHELLS FROM THE FOLLOWING LISTING
3" TITANIUM SALUTE W/ SILVER TAIL

184 SHELLS FROM THE FOLLOWING LISTING
3" ASSORTED COLORS TO CRACKLING SHELLS
3" ASSORTED PALM TREE SHELLS W/ TAILS
3" ASSORTED BROCADE SHELLS
3" ASSORTED COLOR PEONY SHELLS
3" ASSORTED COLOR CHANGE PEONIES W/ TAILS
3" ASSORTED COLOR CHRYSANTHEMUMS
3" ASSORTED COLOR SPECIALTY SHELLS
3" ASSORTED WILLOW SHELLS
3" RED GAMBOGE TO ASST COLOR CHRYSANTHEMUMS W/ TAILS
3" GOLDEN WAVE CHRYSANTHEMUMS TO ASST COLORS W/ TAILS
3" ASSORTED COLOR HALF & HALF CHRYSANTHEMUMS
3" ASSORTED COLOR CHRYSANTHEMUMS W/ CRACKLING

173 SHELLS FROM THE FOLLOWING LISTING
4" ASSORTED SPECIAL EFFECT SHELLS
4" ASSORTED BROCADE & KAMURO SHELLS
4" ASSORTED PALM TREE SHELLS
4" ASSORTED COLOR CHANGE SHELLS W/ TAILS
4" ASSORTED COLOR CHRYSANTHEMUMS
4" ASSORTED SPECIAL EFFECT CHRYSANTHEMUM SHELLS
4" ASSORTED SPECIAL EFFECT PEONY SHELLS
4" SPECIAL ASSORTED COLOR IMPORT SHELLS

138 SHELLS FROM THE FOLLOWING LISTING
5" ASSORTED SPECIAL EFFECTS SHELLS
5" ASSORTED FANCY SPECIAL EFFECTS SHELLS
5" ASSORTED COLOR CHRYSANTHEMUMS
5" ASSORTED SPECIAL EFFECT CHRYSANTHEMUM SHELLS
5" ASSORTED SPECIAL EFFECT PEONY SHELLS
5" ASSORTED PATTERN SHELLS
5" ASSORTED PALM TREES AND COCONUTS
5" ASSORTED DIADEMS, KAMUROS, AND BROCADES

17qwkai.1

FIREWORKS DISPLAY PROPOSAL FOR DODGE CITY KANSAS

DISPLAY DATE 7/4/2017
PROPOSAL DATE 3/16/2017
BOOKING DEADLINE 5/1/2017
BUDGET \$25,000.00

81 SHELLS FROM THE FOLLOWING LISTING

6" ASSORTED SPECIAL EFFECTS SHELLS
6" ASSORTED FANCY SPECIAL EFFECTS SHELLS
6" ASSORTED COLOR CHRYSANTHEMUMS
6" ASSORTED COLOR CHRYSANTHEMUMS W/ TAILS
6" ASSORTED SPECIAL EFFECTS CHRYSANTHEMUMS
6" ASSORTED SPECIAL EFFECT PEONY SHELLS
6" ASSORTED PATTERN SHELLS
6" ASSORTED DIADEMS, KAMUROS, AND BROCADES
6" ASSORTED EFFECT SHELL OF SHELLS
6" SPECIAL ASSORTED COLOR IMPORT SHELLS
6" FANCY ASSORTED COLOR IMPORT SHELLS

24 SHELLS FROM THE FOLLOWING LISTING

8" ASSORTED SPECIAL EFFECT SHELLS
8" ASSORTED SPECIAL EFFECT CHRYSANTHEMUM SHELLS
8" ASSORTED SPECIAL EFFECT PEONY SHELLS
8" ASSORTED FANCY SPECIAL EFFECT SHELLS
8" ASSORTED DIADEMS, KAMUROS, AND BROCADES
8" ASSORTED EFFECT SHELL OF SHELLS
8" SPECIAL ASSORTED COLOR IMPORT SHELLS

10 SHELLS FROM THE FOLLOWING LISTING

10" ASSORTED FANCY SPECIAL EFFECT SHELLS
10" ASSORTED SPECIAL EFFECT CHRYSANTHEMUM SHELLS
10" ASSORTED KAMURO & WILLOW SHELLS
10" ASSORTED EFFECT SHELL OF SHELLS

GRAND FINALE

18 only 3" 12 SHOT TI SALUTES & ASST COLOR EFFECTS
5 only 4" 5-SHOT ASST COLOR EFFECTS
5 only 4" 5-SHOT RED, WHITE & BLUE
12 only 5" 5-SHOT ASST COLOR EFFECTS

17qwka1.1

FIREWORKS DISPLAY PROPOSAL FOR DODGE CITY KANSAS

DISPLAY DATE	7/4/2017
PROPOSAL DATE	3/16/2017
BOOKING DEADLINE	5/1/2017
BUDGET	\$25,000.00

- | | | | |
|-----------------------|--------------------|------|------------------------------------|
| | BOX FINALES | | 36-SHOT COLOR CRACKLING |
| 4 | only | 2.5" | |
| | | | |
| 3" BOX FINALES | | | |
| 3 | only | 3" | 25-SHOT ASSORTED EFFECTS FINALE |
| | | | |
| 4" BOX FINALES | | | |
| 3 | only | 4" | 9-SHOT ASST. COLOR FINALE W/ TAILS |

SUMMARY

MAIN AERIAL		FINALE	
3" Shells	276	2.5" Shells	144
4" Shells	173	3" Shells	291
5" Shells	138	4" Shells	77
6" Shells	81	5" Shells	60
8" Shells	24	Total Shells	572
10" Shells	<u>10</u>		
Total Shells	702		

TOTAL PACKAGE PRICE INCLUDING MATERIAL, SHOOTERS FEE,
 WORKERS COMP, AND \$5,000,000.00 LIABILITY INSURANCE..... **\$25,000.00**

IF YOU ACCEPT THIS PROPOSAL, PLEASE PRINT AND SIGN BELOW AND
 RETURN A COPY TO ALL AMERICAN DISPLAY FIREWORKS.

ACCEPTED BY _____
PRINTED NAME

ACCEPTED BY _____ DATE _____
SIGNATURE



Parks and Recreation

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8144

Memorandum

To: Cherise Tieben, City Manager
City Commissioners

From: Paul Lewis, Director 

Cc: Nannette Pogue, Finance Director
Ryan Reid, Director of Administration

Date: April 13, 2017

Subject: Hazardous Tree Abatement Proposals

Agenda Item: New Business

RECOMMENDATION: Staff recommends accepting the proposal from Arbor Masters for the abatement of hazardous limbs, trees, and stumps on City right of ways and public grounds. The estimated cost of these services is \$59,375 not including landfill fees based on preliminary counts performed by staff. A tabulation of the proposals received is attached with this memo.

BACKGROUND: On January 15th a major winter storm hit the area with significant rain and ice. That storm resulted in substantial damage to the community including power outages and massive downed limbs and debris. The combined damage throughout southwest Kansas was severe enough that a federal disaster was declared February 24th.

During the storm and since that time, City crews have spent over 6,700 man hours at an approximate cost of \$160,000 removing and disposing of debris. This contract will essentially conclude the debris management work by trimming dangerous broken branches still hanging in trees and removing trees that suffered damage so severe they qualify for removal.

JUSTIFICATION: This work is necessary to provide for the ongoing safety of the citizens and to remove severely damaged trees that will continue to decline, affect property values, and prevent future safety hazards.

Arbor Masters offered the preferred proposal based on cost. Based on estimated quantities of trimming and removal, Arbor Masters proposal offers the lowest estimated cost to complete the work and represents the better value. Additionally, Arbor Masters worked in Dodge City under a similar contract with the 2007 ice storm and they are known to have the equipment, manpower, and expertise necessary to fulfill this contract in the required amount of time.

FINANCIAL CONSIDERATIONS: Because this is a federally declared disaster, the City will be reimbursed on a sliding scale of 75% to 85% of the eligible costs related to debris management and emergency services. The man hours that have been expended to date, plus hourly rates for equipment utilized, as well as this contract are all examples of costs eligible for reimbursement. The City's reimbursement on the labor hours alone will be adequate to cover our financial responsibility associated with this contract.

PURPOSE/MISSION: This project is consistent with the City's Core Value of Safety as it reduces ongoing hazards associated with broken limbs and dead and damaged trees along City streets and public grounds.

LEGAL CONSIDERATIONS: Because this work is associated with a federally declared disaster, all rules, regulations and procedures required by FEMA and others must be followed to qualify for reimbursement. City staff is working closely with FEMA personnel in order to comply with those requirements and to date that process is moving forward appropriately.

ATTACHMENTS: Hazardous Tree Abatement Summary Tab

Dodge City Parks & Recreation
RFP Summary Tab

Hazardous Tree Abatement

April 13th, 2017

Firm	Addenda	Hazardous Limbs \$/ Tree	Hazardous Trees \$ per Tree				
			6 to 11.99"	12 to 23.99"	24 – 35.99"	36 – 47.99"	> 48"
Arensmen Services		125.00	200.00	380.00	480.00	980.00	1,380.00
Arbor Masters	1	75.00	80.00	250.00	350.00	450.00	500.00
TFR Enterprises	1	90.00	90.00	549.00	785.00	900.00	990.00
Worley Services Inc.	1	65.00	150.00	300.00	575.00	900.00	1500.00
Henderson Tree Care*	1	70.00	160.00	465.00	795.00	995.00	2000.00
			Hazardous Stumps \$ per Stump				
			6 to 24.99"	25 to 47.99"	> 48"		
TFR Enterprises			100.00	100.00	100.00		
Worley Services Inc.			95.00	225.00	355.00		

* Price does not include bond costs. Add 3% for bonding.

Exhibit E

14th Ave.

Central

Comanche

Wyatt Earp

Designated markers are representative only.
City makes no quarrentee as to the exact
quanity of eligible trees. Contractor must
verify to his own satisfaction the scope of the work.

