

**SPECIAL CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

Tuesday, May 30, 2017

8:00 a.m.

**CALL TO ORDER**

**ROLL CALL**

**NEW BUSINESS**

1. Approval of the Northern National Gas Contract for the Bio Gas Project

**ADJOURNMENT**

**INTERCONNECT, OPERATING  
AND REIMBURSEMENT AGREEMENT**

**BETWEEN**

**NORTHERN NATURAL GAS COMPANY**

**AND**

**CITY OF DODGE CITY, KANSAS**

This Interconnect, Operating, and Reimbursement Agreement (“Agreement”) is made and entered into as of this 23<sup>rd</sup> day of May 2017, by and between Northern Natural Gas Company, a Delaware corporation (“Northern”) and the City of Dodge City, Kansas, a municipal corporation (“Dodge City”). Northern and Dodge City are sometimes referred to herein individually as “Party” and collectively as the “Parties.”

**WITNESSETH:**

**WHEREAS**, Northern owns and operates an interstate natural gas transmission system subject to the jurisdiction of the FERC; and

**WHEREAS**, Dodge City is a municipal corporation located in the state of Kansas; and

**WHEREAS**, Dodge City has requested that Northern construct an interconnection between the facilities of Northern and a facility currently under construction south of Dodge City in order to deliver natural gas into Northern’s pipeline system; and

**WHEREAS**, the natural gas that Dodge City intends to deliver into Northern’s pipeline system is natural gas from biomethane production; and

**WHEREAS**, the type of biomethane gas is produced from sewage treatment.

**NOW, THEREFORE**, in consideration of the terms and conditions set forth below, Northern and Dodge City hereby agree as follows:

**Section 1. Definitions**

1.1 “Actual Cost” means the reasonable cost of the Northern Facilities, as determined in Northern’s sole discretion, including but not limited to (i) planning, design, materials, labor, contract and engineering costs; (ii) overheads; (iii) all taxes and allowance for funds used during construction (“AFUDC”), when applicable; and (iv) operating and maintenance (O&M) costs, if applicable.

1.2 “Agreement” means this Interconnect, Operating, and Reimbursement Agreement between Northern and Dodge City.

1.3 “Biomethane Gas Guidelines” means the Biomethane Gas Guidelines posted on Northern’s website applicable to sewage plants, as such guidelines are revised from time to time, or as otherwise agreed to by the Parties in separate writing.

1.4 “CIAC” means contribution in aid of construction and is defined as any amount of money or other properties contributed to Northern for the purpose of constructing plant or adding constructed plant to Northern’s natural gas pipeline and storage systems. Income tax gross-up associated with the CIAC, which represents the time value of money resulting from the timing of tax payments made and tax deductions allowed, will be included in the Actual Cost if the CIAC is determined by Northern to be taxable revenue as defined by § 118(b) of the Internal Revenue Code. The amount of the CIAC is subject to True-Up.

1.5 “Dodge City Facilities” means all natural gas service equipment (including, but not limited to, valves, pressure regulators located upstream of the Northern Facilities.

1.6 “FERC” means the Federal Energy Regulatory Commission.

1.7 “GT&C” means the General Terms and Conditions of Northern’s Tariff, as revised from time to time.

1.8 “Interconnect Point” means the point of interconnection between Northern and the Dodge City Facilities located in Section 26, T28S, R25W, Ford County, Kansas (approximately 37.58896,-100.02077). The Interconnect Point will be called Dodge City Biogas Ford Co. and the point of interest (POI) number will be 79338.

1.9 “Necessary Approvals” means an order or approval that has become final and is no longer subject to rehearing or appeal regarding the construction and operation of the Northern Facilities, issued by FERC, any federal, state, local, and municipal agency, or any other governmental authority in a form and substance satisfactory to Northern in its sole determination; provided, however, at Northern’s sole discretion, it may waive a Necessary Approval.

1.10 “Northern Facilities” means the Northern-owned facilities that are being installed pursuant to this Agreement including (a) measurement facilities with a design capacity of 1,500 Mcf per day for receipt from the Dodge City Facilities consisting of an ultrasonic meter, gas chromatograph, control valve, check valve, slam valve, H<sub>2</sub>O monitor, H<sub>2</sub>S monitor, O<sub>2</sub> monitor, flow computer, SCADA, flanged inlet connection for Dodge City, yard piping, and appurtenant facilities; (b) pipeline facilities consisting of a 4-inch-diameter pipeline between a tap on Northern’s pipeline system and the Interconnect Point; and (c) tap facilities with a design capacity of 1,500 Mcf per day consisting of a tap and valve assembly on Northern’s 6-inch-diameter pipeline designated KSB30301.

1.11 “Northern’s Tariff” means Northern’s FERC Gas Tariff, as revised from time to time.

1.12 "Receipt Gas" means the natural gas from the Dodge City Facilities to be delivered into Northern's pipeline system and the Northern Facilities.

1.13 "True Up" means upon completion of the Northern Facilities, Northern will adjust the estimated cost (found in Appendix A) to the Actual Cost and the CIAC (i.e., Dodge City agrees to pay Northern the difference if the actual amount is greater than the estimate, or Northern agrees to pay Dodge City the difference if the actual amount is less than the estimate).

## **Section 2. Northern Facilities**

2.1 Subject to any Necessary Approvals, the Northern Facilities will be designed, constructed, operated, tested and maintained by Northern in accordance, in Northern's sole determination, with Northern's and industry's standards and codes (including AGA design standards) where applicable. Northern will use commercially-reasonable efforts to have the Northern Facilities placed in service no later than December 1, 2017, provided, however, Northern will have no liability whatsoever if the Northern Facilities are not placed in service by such date.

2.2 Dodge City will pay to Northern the sum of one million, six hundred fifty-six thousand, three hundred sixty-nine dollars (\$1,656,369) as a CIAC for the costs of the installation of Northern Facilities at the Interconnect Point. Appendix A shows the detail of these costs. The entire CIAC must be received by Northern within ten (10) calendar days following the execution of this Agreement.

2.3 Upon the completion of the construction of the Northern Facilities, Northern will True Up the Actual Cost. If the Actual Cost of the Northern Facilities incurred by Northern, after True Up, exceeds the CIAC, Dodge City will reimburse Northern for the amount in excess of the CIAC within thirty (30) calendar days after receipt of Northern's invoice therefore. If the Actual Cost is less than the CIAC, Northern will remit to Dodge City the difference between the CIAC and the Actual Cost within one hundred and eighty (180) calendar days from the completion of Northern's construction.

2.4 In order to complete the Northern Facilities, Northern will provide all necessary materials and perform all work in a good and workmanlike manner in accordance with generally accepted industry practice.

2.5 Northern does not guarantee any particular pressure for deliveries through the Northern Facilities other than as provided in Northern's Tariff.

2.6 In the event the project is terminated prior to completion for any reason caused by Dodge City, Dodge City will pay, or Northern will retain from the CIAC, as applicable, the amount of any Actual Cost incurred including, but not limited to, costs committed for construction of the Northern Facilities. Dodge City's sole and equitable interest in the CIAC is limited to a residual interest, which shall mean the beneficial interest in the CIAC remaining

after payment of the Actual Cost. Northern shall be deemed to have a right of recoupment for the CIAC.

2.7 Gas receipts will be provided pursuant to effective service agreement(s) and will be subject to the GT&C of Northern's Tariff. Except as may otherwise be provided in effective service agreement(s), Northern will have no obligation to provide service to Dodge City as a result of the construction of the Northern Facilities.

2.8 Dodge City will not operate, alter or make changes to any part of Northern's Facilities without the advance written consent of Northern. If Dodge City operates, alters or changes the Northern Facilities, Dodge City will be liable for any and all damages to Northern at law or in equity.

### **Section 3. Dodge City Facilities**

3.1 Dodge City will provide, retain ownership of, operate and maintain the Dodge City Facilities.

3.2 Dodge City warrants and represents to Northern that it has the knowledge and expertise, and its employees, agents and contractors are qualified to design, construct and operate the gas service equipment required upstream of the point of the Interconnect Point specifically, but not by way of limitation, the receipt of gas at Northern's pressure.

### **Section 4. Operation and Maintenance**

4.1 Northern shall operate and maintain the Northern Facilities in accordance with generally accepted industry standards, Northern's operating procedures and the provisions of Northern's Tariff as revised from time to time, subject to the terms and conditions contained herein. Northern will be responsible for the costs associated with the operation and maintenance of the Northern Facilities. Dodge City will provide Northern reasonable physical access to the Northern Facilities located on Dodge City property.

4.2 Dodge City will be responsible for the costs associated with the operation and maintenance of the Dodge City Facilities.

4.3 Dodge City or Northern will provide the other Party reasonable physical access to the other Party's equipment monitoring electronic flow measurement at the Interconnect Point.

4.4 Pursuant to this Agreement, the data obtained from the gas chromatograph will be applied to data obtained from the measurement at the Interconnect Point and said data will be used for billing purposes under the applicable service agreements.

4.5 Dodge City and Northern will resolve all measurement-related issues or disputes in accordance with the GT&C of Northern's Tariff.

### **Section 5. Testing of Natural Gas**

5.1 Dodge City shall demonstrate, as provided in this Section 5, that the Receipt Gas is merchantable and meets the gas quality specifications as required by the GT&C of Northern's Tariff before gas flow starts or resumes into Northern's pipeline system by complying with the Biomethane Gas Guidelines.

5.2 Northern shall have the right to share chromatograph data and test results obtained from Dodge City pursuant to this Section 5 and the Biomethane Gas Guidelines with shippers on its pipeline system.

### **Section 6. Termination**

6.1 This Agreement will be effective as of the date written in the opening paragraph of this Agreement, and, except as provided in this Agreement, will remain in full force and effect thereafter for the life of the Northern Facilities.

6.2 Northern will have the right to terminate this Agreement at any time upon ninety (90) calendar days written notice to Dodge City, if (i) the Interconnect Point becomes inactive for twelve (12) consecutive months or more, or (ii) the Northern Facilities are abandoned by order of the FERC. Such twelve (12) month period of inactivity will not commence prior to Dodge City's initial deliveries to the Interconnect Point. Provided; however, if initial deliveries at the Interconnect Point have not occurred by December 1, 2018, the twelve (12) month period of inactivity will commence on December 1, 2018.

6.3 Upon termination of this Agreement, Dodge City will, unless mutually agreed, promptly disconnect the Dodge City Facilities from the Northern Facilities at the Interconnect Point, and Dodge City will pay all costs of such disconnection, including, but not limited to, costs to Northern of any such disconnection.

### **Section 7. Assignment**

This Agreement will be binding upon and inure to the benefit of Dodge City and its successors and assigns and Northern and its successors and assigns. Notwithstanding the foregoing, neither Party may assign or delegate its rights or obligations hereunder without the prior express written consent of the other Party, which will not be unreasonably withheld, and any such purported assignment or delegation without the other Party's express written consent will be null and void.

### **Section 8. Confidentiality**

Except as to the interpretation, applicability, or enforcement of this Agreement before a trier of fact or as may be required by administrative rules or judicial action, Dodge City will not reveal this Agreement or the terms and conditions thereof to any other parties.

### **Section 9. Choice of Law, Jurisdiction, and Waiver of Jury Trial**

9.1 This Agreement and operations hereunder are subject to Northern's Tariff, all valid laws, rules, regulations and orders of any governmental agency or regulatory authority having jurisdiction, including without limitation, the receipt of Necessary Approvals.

9.2 AS TO ALL MATTERS OF CONSTRUCTION AND INTERPRETATION, THIS AGREEMENT WILL BE INTERPRETED, CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF NEBRASKA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS.

9.3 TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

#### **Section 10. Notices**

Any notices required by this Agreement will be in writing and addressed to:

- (a) If to Dodge City:  
Ray Slattery  
Director of Engineering Services  
806 N. 2nd Ave.  
Dodge City, KS 67801  
620-225-8106  
620-225-8144  
rays@dodgecity.org
  
- (b) If to Northern:  
Customer Service and Business Development  
1111 So. 103rd St.  
Omaha, NE 68124  
Phone No.: (402) 960-7949  
Fax No.: (402) 548-5281  
email: [nngcontracts@nngco.com](mailto:nngcontracts@nngco.com) (Market Area)

#### **Section 11. Breach and Consequential Damages**

11.1 Dodge City's failure to comply with the terms contained in the GT&C of Northern's Tariff, or the terms of this Agreement is a breach and will constitute a default under this Agreement. Upon Dodge City's default, Dodge City will be liable for any and all damages at

law or in equity hereunder, as accelerated to the date of such breach, including any such rights Northern may exercise pursuant to Northern's Tariff.

11.2 Notwithstanding anything in Section 6, either Party may terminate this Agreement for breach or non-performance by the other Party if such other Party fails to cure its breach or non-performance within thirty (30) calendar days after receipt of written notice hereunder.

## **Section 12. Liability and Indemnification**

12.1 Northern will defend, indemnify and save harmless Dodge City, its affiliated companies and officers, directors, shareholders, employees, subsidiaries, agents and other representatives from and against liabilities, losses, claims, damages, penalties, causes of action, suits (including suits for personal injuries or death and including reasonable attorneys' fees and expenses) claimed from or against Dodge City caused or resulting from the negligence or willful misconduct of Northern in the operations of the Northern Facilities.

12.2 Dodge City will defend, indemnify and save harmless Northern, its affiliated companies and officers, directors, shareholders, employees, subsidiaries, agents and other representatives from and against liabilities, losses, claims, damages, penalties, causes of action, suits (including suits for personal injuries or death and including reasonable attorneys' fees and expenses) claimed from or against Northern caused or resulting from the quality of the gas delivered to Northern from the Dodge City Facilities or the negligence or willful misconduct of Dodge City in the operations of the Dodge City Facilities .

12.3 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM SUCH PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

12.4 In the event a claim is threatened or filed against either Party ("Indemnified Party") for which the other Party ("Indemnifying Party") is obligated to indemnify the Indemnified Party under the terms of this Agreement, the Indemnified Party will promptly notify the Indemnifying Party of such claim and will not settle such claim without the prior written consent of the Indemnifying Party. Participation by either Party in the defense of any claim or suit, for which the other Party may be found liable, will not constitute a waiver of either Party's rights to indemnification hereunder.

12.5 Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

### **Section 13. Force Majeure**

13.1 Force Majeure. If either Party is rendered unable, wholly or in part, by an event of Force Majeure (as defined below) to carry out its obligations under this Agreement, except for the payment of money, it is agreed that the obligations of the Party, so far as they are affected by such Force Majeure event, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch.

13.2 The term "Force Majeure," as employed herein, shall include but not be limited to acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washout, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making repairs, tests of or alterations to machinery or lines of pipe, freezing of lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming suspension; such term shall likewise include: (i) in those instances where any Party hereto is required to obtain servitudes, right-of-way, grants, permits or licenses to enable such Party to fulfill its obligations hereunder, the inability of such Party to acquire, or the delays on the part of such Party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, right-of-way, grants, permits or licenses, and (ii) in those instances where any Party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such Party to fulfill its obligations hereunder, the inability of such Party to acquire, or the delays on the part of such Party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

13.3 The settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any Force Majeure event shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to any demands when such course is inadvisable in the discretion of the Party having the difficulty.

13.4 A Party affected by a Force Majeure event shall give prompt notice and reasonably full particulars of the Force Majeure event to the other Party in writing or by electronic mail, facsimile, or telephone, followed by written confirmation to the other Party within a reasonable time after the occurrence of the cause relied on.

### **Section 14. Representation and Warranties of Dodge City**

Dodge City hereby represents and warrants to Northern the following:

14.1 Dodge City is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization/incorporation and has full power to execute, deliver and perform this Agreement.

14.2 The execution, delivery and performance of this Agreement have been and remain duly authorized by all necessary corporate or organizational action and do not contravene any provision of law or of Dodge City's constitutional documents or any contractual restriction binding on Dodge City or its assets.

14.3 All consents, authorizations and approvals of, and registrations and declarations with, any governmental authority necessary for the due execution, delivery and performance of this Agreement have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by and no notice to or filing with, any governmental authority is required in connection with Dodge City's execution, delivery or performance of this Agreement.

14.4 Dodge City's assets, at their respective fair value, exceed Dodge City's liabilities and Dodge City has, or will have, sufficient cash and capital to pay its liabilities and obligations as they become due.

14.5 In consideration for its execution of this Agreement, Dodge City will receive reasonably equivalent value for the obligations that it is assuming as a result of this Agreement.

#### **Section 15. Representation and Warranties of Northern**

Northern hereby represents and warrants to Dodge City the following:

15.1 Northern is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization/incorporation and has full power to execute, deliver and perform this Agreement.

15.2 The execution, delivery and performance of this Agreement have been and remain duly authorized by all necessary corporate or organizational action and do not contravene any provision of law or of Northern's constitutional documents or any contractual restriction binding on Northern or its assets.

15.3 Northern's assets, at their respective fair value, exceed Northern's liabilities and Northern has, or will have, sufficient cash and capital to pay its liabilities and obligations as they become due.

15.4 In consideration for its execution of this Agreement, Northern will receive reasonably equivalent value for the obligations that it is assuming as a result of this Agreement.

## **Section 16. Miscellaneous**

16.1 Each provision of this Agreement will be considered severable so that if any one provision or clause conflicts with or may not be given full effect because of applicable law, this will not affect any other provisions which can be given effect without the conflicting provision or clause.

16.2 No waiver by a Party of any one or more defaults by the other Party in the performance of this Agreement will operate or be construed as a waiver of any future default or defaults, whether of a like or different character.

16.3 Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

16.4 This Agreement is not intended to create, and will not be construed to create, a relationship of partnership or an association for profit between the Parties hereto. The provisions of this Agreement will not impart rights of enforceability to any person, firm or organization not a Party or not bound as a Party, or not a permitted successor or assignee of a Party bound by this Agreement.

16.5 Any terms not defined herein will have the meanings set forth in Northern's Tariff and any conflicts between this Agreement and Northern's Tariff will be resolved in favor of Northern's Tariff.

16.6 This Agreement may be executed in counterparts, each of which when signed will be deemed an original, but all of which together will constitute one and the same instrument.

16.7 This Agreement and Exhibits hereto, if any, constitute the entire agreement between Northern and Dodge City pertaining to the subject matter hereof. In the event of a conflict between a provision of this Agreement and a provision of a prior agreement, representation or understanding of the Parties, oral or written, the provision of this Agreement will control without invalidating the remaining provisions of such prior agreement, representation or understanding. No provision of this Agreement may be amended or waived unless such amendment or waiver is agreed to in writing signed by both Parties.

16.8 Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically ("Imaged Documents"). Imaged Documents may be introduced as evidence in any proceeding as if such were original business records and neither Party will contest the admissibility of Imaged Documents as evidence in any proceeding.

16.9 This Agreement will be void and of no effect if not executed and returned to Northern by June 1, 2017.

IN WITNESS WHEREOF, Northern and Dodge City have executed this Agreement effective as of the date first above written.

NORTHERN NATURAL GAS COMPANY

CITY OF DODGE CITY, KANSAS

By: Kent Miller

By: \_\_\_\_\_

Print Name: Kent Miller

Print Name: \_\_\_\_\_

Title: 5-25-17

Title: \_\_\_\_\_

INTERCONNECT, OPERATING  
AND REIMBURSEMENT AGREEMENT  
BETWEEN  
NORTHERN NATURAL GAS COMPANY  
AND  
CITY OF DODGE CITY, KANSAS

APPENDIX A

Facilities and Estimated Costs

Project Name: City of Dodge City, KS Biogas Ford Co.

Facilities Description: Receipt station, tap and 0.82 miles of 4" diameter lateral line

<u>Cost Category</u>	<u>Estimated Cost</u>
Contract Labor	\$656,655
Materials	\$293,960
Freight	\$13,229
Taxes	\$23,517
Environmental	\$47,400
Construction Support	\$163,909
District Labor and Equipment	\$29,000
Engineering	\$20,000
Design	\$30,000
Right of Way	\$9,750
Contingency	\$65,372
Subtotal	\$1,352,792
Income Tax Gross-Up	\$254,428
Overheads	\$28,676
O&M (10 years)	\$20,473
Subtotal	\$303,577
Total Estimated Cost	\$1,656,369