

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Tuesday, January 2, 2018

7:00 p.m.

MEETING #5087

CALL TO ORDER

ROLL CALL

INVOCATION BY Pastor Corky Spittler of Christ the King Lutheran Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

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 Special Meeting Minutes, December 18, 2017;
2. Approval of City Commission Meeting Minutes, December 18, 2017;
3. Approval of City Commission Special Meeting Minutes, December 28, 2017;
4. Appropriation Ordinance No. 1, January 2, 2018;
5. Approval of Change Order No. 2 of Heritage District Parking Lot Improvements.

ORDINANCES & RESOLUTIONS

NEW BUSINESS

1. Approval of Consulting Agreement for the Design of a Sampling Basin and Force Main. Report by Director of Engineering, Ray Slattery.
2. Approval of Audit Engagement Letter for Years Ending December 31, 2017 and December 31, 2018 with Kennedy McKee & Co. Report by Finance Director/City Clerk, Nannette Pogue.

3. Approval of Bio-Gas Contract for Sale and Purchase of Natural Gas with World Fuel Services, Inc. Report by City Attorney, Brad Ralph.

OTHER BUSINESS

ADJOURNMENT

SPECIAL CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, December 18, 2017

6:30 p.m.

CALL TO ORDER

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

EXECUTIVE SESSION

Commissioner Joyce Warshaw moved to recess into executive session pursuant to the exception found in K.S.A. 75-4319(b)(3) for matters related to employer-employee negotiations. The justification for closing the meeting is to protect the City's position in negotiations with the Fraternal Order of Police. The meeting will resume in the City Commission Chamber in 30 minutes at 7:00 p.m.

At 7:00 p.m. the meeting was reconvened Regular Session

ADJOURNMENT

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

ATTEST:

Mayor

Nannette Pogue, City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, December 18, 2017

7:00 p.m.

MEETING #5085

CALL TO ORDER

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

INVOCATION by Reverend Jerre Nolte

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

The Mayor opened the Public Hearing for the Sutherlands Development Community Improvement District (CID). Nannette Pogue, Finance Director/City Clerk explained that the public hearing had been advertised and it was to place an additional sales tax that was petitioned for by the property owner in the district. No other public comments were heard.

Commissioner Kent Smoll moved to close the public hearing. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

PETITIONS & PROCLAMATIONS

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).

Fire Chief Robert Heinz and Deputy Fire Chief Ken Spencer made a presentation to the Fire Shift that responded to a fire on November 18, 2017 at 1103 1st Avenue. At that fire, several occupants were in the structure and were saved by the fire shift that responded to that fire. Those responding to the fire and are recognized for the award are: Captain Brian Hudson, Engineer Aaron Pyle, Engineer Scott Wadley, Firefighter Brian Green, Firefighter Andrew Kintner, Firefighter Richard Hartman, Firefighter Ian Deges, and Firefighter Robert Montes. The Fire Chief, Deputy Chief, City Manager and City Commissioners are extremely proud of the work done by the fire department and specifically at this event.

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes, December 4, 2017;
2. Approval of City Commission Meeting Minutes, December 4, 2017;

3. Appropriation Ordinance No. 24, December 20, 2017;
4. Cereal Malt Beverage License:
 - a. Casa Alvarez Restaurant, 1701 E. Wyatt Earp Blvd.,
 - b. Roberto's Station, 302 S. 2nd Avenue.
 - c. Walgreens #07817, 1801 N. 14th Avenue
5. Approval to Purchase the AnalyticsNOW Software.

Commissioner Jan Scoggins moved to approve the Consent Calendar as presented, Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

ORDINANCES & RESOLUTIONS

Ordinance No 3678: An Ordinance Authorizing and Providing for the Issuance of General Obligation Refunding Bonds, Series 2017-B, of the City of Dodge City, Kansas for the purpose of providing funds to refund a portion of the City's outstanding General Obligation Bonds; providing for the levy and collection of an annual tax for the purposes of paying the principal of and interest on said bonds as they become due; authorizing certain other documents and actions in connection therewith; and making certain covenants with respect thereto was approved on a motion by Commissioner Brian Delzeit. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

Resolution No. 2017-38: A Resolution Prescribing the Form and Details of and Authorizing and Directing the Sale and Delivery of General Obligation Refunding Bonds, Series 12017-B, of the City of Dodge City, Kansas, Previously Authorized by Ordinance No. 3678 of the Issuer; Making Certain Covenants and Agreements to Provide for the Payment and Security Thereof; and Authorizing Certain Other Documents and Actions Connected Therewith was approved on a motion by Commissioner Brian Delzeit. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

Ordinance No. 3679: An Ordinance Authorizing the Creation of the Sutherlands High Plains LLC Community Improvement District in the City of Dodge City, Kansas; Authorizing the Imposition of a Community Improvement District Sales Tax to be Collected Within Such District; and Approving and Authorizing Certain Other Actions in Connection Therewith (Sutherlands Development CID) was approved on a motion by Commissioner Kent Smoll. Commissioner Jan Scoggins seconded the motion. The motion carried unanimously.

NEW BUSINESS

1. Commissioner Joyce Warshaw moved to approve Mike Martinez to the Library Board and Commissioner Jan Scoggins to serve as the Commission representative for the Santa Fe Trail Solid Waste Advisory Board Committee. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.
2. Commissioner Jan Scoggins moved to approve the Early Retirement Policy with the word "Incentive" removed from the title. Commissioner Delzeit seconded the motion. The motion failed by a vote of 2-3, with Delzeit, Warshaw and Smoll voting no.

The Commission asked that the policy be brought back to the Commission with additional information.

3. Commissioner Brian Delzeit moved to approve the Amendments and Revisions to the FOP Memorandum of Understanding for the 2 year proposal. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.
4. Commissioner Jan Scoggins moved to approve the bid from Hydro Resources in the amount of \$92,000 for the Rehabilitation of Municipal Water Wells No. 21 and 29. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.
5. Commissioner Kent Smoll moved to approve the bid from Kansas Golf and Turf in the amount of \$52,411 for the Mariah Hills Golf Course Fairway Mower. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.
6. Commissioner Jan Scoggins moved to approve the bid from Denton Construction in the amount of \$74,072.63 for St Mary Soccer Complex Fencing. Commissioner Sowers seconded the motion. The motion carried 4-1, with Kent Smoll voting no.
7. Commissioner Kent Smoll moved to approve to enter into a Letter of Intent with Casey's for the Lot #1 at the NW Corner of 14th and Soule and authorize staff to proceed with negotiating with Dodge Partners LLC for Lots 2 and 3. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

OTHER BUSINESS

City Manager Cherise Tieben

- Reminder that there will be a Special City Commission meeting on December 28th at 8:00 a.m. to provide a public hearing and review and approve the 2017 Budget Amendments.
- Next Regular Meeting will be January 2, 2018.

Commissioner Kent Smoll

- Asked about the drainage issue that was brought to the City Commission a couple of meetings ago. Cherise Tieben responded that staff was working on a response, but it will take some time.
- Was presented with a bumper sticker that says "support your local economy". Continue to shop local.
- Merry Christmas

Commissioner Jan Scoggins

- Appreciated all of the citizens who put out their Christmas lights. There are some wonderful displays.
- Reminded everyone that ice skating is still available

Commissioner Joyce Warshaw

- Merry Christmas and Happy New Year. Looking forward to 2018

Commissioner Brian Delzeit

- Congratulated Jane Longmeyer and Paul Lewis on their retirements at the end of the year and thanked them for their many years of service.
- Merry Christmas to everyone! 2018 will be an exciting year with all of the building happening. Sutherlands will be here, Rib Cribb will be coming in and other exciting projects will be happening.

Mayor, Rick Sowers

- Merry Christmas and Happy New Year

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

SPECIAL CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Thursday, December 28, 2017

8:00 a.m.

Meeting 5086

CALL TO ORDER

ROLL CALL: Mayor Rick Sowers, Commissioners Kent Smoll and Brian Delzeit. Commissioner Jan Scoggins was present by phone. Commissioner Joyce Warshaw was reported absent.

CONSENT CALENDAR

Appropriation Ordinance for December 26, 2017

Commissioner Kent Smoll moved to approve the Consent Calendar as presented, Commissioner Brian Delzeit seconded the motion. The motion carried 4-0.

Commissioner Joyce Warshaw joined the meeting at 8:05 a.m.

PUBLIC HEARING

The Mayor opened the public hearing on the 2017 Budget Amendments.

Nicole May, Assistant Finance Director, reported on the proposed 2017 budget amendments. A public notice was published in the Dodge City Daily Globe on December 17, 2017, notifying the public of the public hearing. No public comment was heard.

Commissioner Kent Smoll moved to close the public hearing. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

NEW BUSINESS

Commissioner Jan Scoggins moved to approve the 2017 Budget Amendments. Commissioner Joyce Warshaw seconded the motion. The motion carried unanimously.

ADJOURNMENT

Commissioner Kent Smoll moved to adjourn the meeting. Commissioner Brian Delzeit seconded the motion. The motion carried unanimously.

Mayor

ATTEST:

City Clerk, Nannette Pogue

Memorandum

To: City Manager
Assistant City Manager
City Commissioners *RS*

From: Ray Slattery, *RS*
Director of Engineering
Services

Date: December 20, 2017

Subject: Heritage District Parking
Lot Improvements ST1612

Agenda Item: Consent Calendar

Recommendation: Approve change order No. 2 of Heritage District Parking Lot Improvements.

Background: Heritage District Parking Lot Improvements was approved by City Manager on August 15, 2015.

Justification: Unclassified Excavation (Inc. Pavement Removal) – The additional 207 C.Y. represents actual as-built measurements. Some additional paving was encountered during the construction of the parking lots and associated sidewalks.

Embankment (VRF = 1.15) – The decrease of 120 C.Y. represents actual as-built measurements. Not as much fill was required as anticipated.

Curb & Gutter, Combine (30”) - The decrease in 151 L.F. represents actual as-built measurements. A majority of this decrease came from not having to remove and replace as much Curb & Gutter on the Wyatt Earp Blvd. “bump out”.

Monolithic Curb & Gutter - The decrease in 62 L.F. was because the island between the Chaffin and Lopp property “extended” was not constructed. This was done because of a mutual agreement between the two property owners.

4” Barrier Curb – The decrease in 2 L.F. was due to the fact that 2 L.F. were left on the contract when we looked at the Value Engineering at the start of the project to get the project within budget. This barrier curb was not used.

Monolithic Barrier Curb – The additional 4 L.F. represents the actual placed quantity along the north side of the Stanion Property.

Sidewalk Ramp (Type I) – An additional ramp was added to provide better access from the parking lot.

6” Concrete Sidewalk – The addition of 77 S.Y. represents the replacement of the sidewalk along 4th Ave.

Type 22 Curb Inlet, 6’x3.5’ – Two inlets were added to the project near the 3rd Ave. (vacated) parking lot entrance. This was necessary to regrade the parking lot to avoid any conflict with the 3rd Ave. RCB.

Construction Entrance – This item was deleted from the project. The contractor used existing paved or rocked areas to access the project.

Inlet Protection - This item was deleted from the project. No items were in the immediate are of construction. The two inlets added where installed after the parking lot pavement was completed.

Cedar Split Rail Fence - The decrease of 112 L.F. is because the fence around the wooden box was deleted from the project.

8” Broken White Pavement Marking – This item was deleted from the project. This work was done by City Crews. Materials were paid for out of the project funds. This was done as a cost saving measure.

8” Solid White Pavement Marking – This item was deleted from the project. This work was done by City Crews. Materials were paid for out of the project funds. This was done as a cost saving measure.

4” Solid White Pavement Marking – The decrease in 372 L.F. represents actual as-built measurements. The parking spaces along Lopp motors were not stripped per their request.

4” Solid Yellow Pavement Marking – The decrease in 372 L.F. represents actual as-built measurements. The parking spaces along Lopp motors were not stripped per their request.

Turn Lane-Use Arrow – This item was deleted from the project. This work was done by City Crews. Materials were paid for out of the project funds. This was done as a cost saving measure.

Elongated Letters for Word Pavement Markings (ONLY) – This item was deleted from the project. This work was done by City Crews. Materials were paid for out of the project funds. This was done as a cost saving measure.

18" RCP Installed – This item was added to the project to avoid any conflict with the 3rd Ave. RCB. A low spot was created in the parking lot on each side of the RCB. The RCB was made the high spot in the parking lot.

Concrete Pavement (7")(AE)(NRDJ) – The increase of 52 S.Y. was contributed to adding some additional width and length to the west end of the parking lot near 5th Ave. to make a better tie-in to accommodate the truck traffic.

Concrete Pavement (6")(AE)(JRDJ) – This decrease was because the existing concrete pavement along the north side of Lopp Motor was not replaced. This was done so that Lopp Motors could have access to their shop area. This was a request made by Lopp Motors.

Deduct Wide Saw Cutting – This item was added in Change Order #1 as a cost saving measure. There was a reduction in concrete paving of 911 S.Y. in the parking lot.

Financial Considerations: Change Order 2 is for an decrease of \$18,658.55.

Purpose/Mission: One of the City's core values in Ongoing Improvements. With the construction of these improvements the City is preparing for the community's future and providing new possibilities for current.

Legal Considerations: N/A

Attachments: Change Order 2

Memorandum

*To: City Manager
City Commissioners*

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

Date: December 28, 2017

*Subject: Consulting Agreement for the Design of a Sampling
Basin and Force Main, SS 1701.*

Agenda Item: New Business

Recommendation: Approve Consulting Services Agreement with PEC Consultants.

Background: From time to time there have been disputes on sampling and billing of the waste water from National Beef Processors (NBP). To resolve these issues both parties believe it is in the best interest to construct a Sampling Basin prior to the flow from NBP entering the Primary Pump Station. If the Primary Pump Station surcharges, there will be no possibility of the surcharged water being comingled with the flow from NBP and sampled. The new force main will be constructed to fully separate NBP flow from the municipal flow. In the early '90's the East Dodge Pressure Sewer (EDPS) was constructed to provide sewer to the businesses along East Trail St from Kindsvater Trucking east. As NBP has grown over the years and acquired adjacent property, NBP continued to utilize the EDPS. In most instances the acquisition did not add additional flow to the EDPS, however with one of the NBP expansions a new cafeteria and locker room area was added to the EDPS. As more development is seen on East Trail St. and connects to the EDPS, the system will reach capacity. The thought is that NBP flow can be removed from the EDPS and allow for more flow from future development. This will also combine all of NBP flow so that it can be measured and sampled. PEC is very familiar with the city's waste water system. They designed the expansion project of the South WWTP, the Reclamation Facility, and upgrades to the Primary Pumping Station. PEC has a good working relationship with city staff, and KDHE.

Justification: The design of the Sampling Basin and Force Main will provide an easier and just flow measurement and sampling of NBP's waste water. The new force main will remove existing flow from the EDPS and allow run for future growth.

Financial Considerations: The contract with PEC is for \$168,900.00. Funding for these services will be split 50%-50% between the City and NBP. the construction of this project will also be split 50%-50% between the City and NBP. The City's portion of the project was budgetted in the 2018 CIP.

Purpose/Mission: The completion of this project meets our Core Value of Ongoing Improvement. Along with providing Safe services for our citizens.

Legal Considerations: The City is entering into a contract with PEC Consultants and is bound by the provisions of this contract.

Attachments: The Consulting Services Agreement with PEC Consultants.



November 29, 2017

Mr. Ray Slattery, P.E.
City of Dodge City
P.O. Box 880
Dodge City, KS 67801

Reference: Wastewater System Improvements
PEC Project No. 34-170940-000-1009

Dear Mr. Slattery:

This letter is written to serve as an agreement between City of Dodge City (CLIENT) and Professional Engineering Consultants, P.A. (PEC) to provide professional services for Wastewater System Improvements, Dodge City, Kansas (the Project).

A. Project Description.

1. PEC will provide design, bidding, and construction services for the City of Dodge City (the City) and National Beef Packing Company, LLC (NBP) wastewater collection system improvements. The proposed improvements include:
 - a. Improvements to the National Beef Packing Company, L.L.C (NBP) gravity wastewater collection line. These improvements include:
 - 1) Connecting three locations on property recently acquired by NBP to the current NBP gravity line (privately owned by NBP) that conveys wastewater to the City's Primary Lift Station. These locations currently have pump stations conveying wastewater to the City's force main that also conveys water to the City's primary pump station wet wells. Locations are as follows:
 - NBP Corporate Engineering Office (formerly known as Kindsvater North)
 - WW
 - NBP Employment Office (formerly known as Curtis)
 - 2) Spot repairs on the NBP gravity pipeline based on information obtained from the line being televised. PEC will arrange for this work to be completed with costs to be paid by the CLIENT as a subcontractor to PEC.
 - b. Improvements at the City's Primary Lift Station wet wells. These improvements will include:
 - 1) Constructing a new NBP lift station on the gravity line and a wetwell prior to the City's existing lift station to convey flows which will also include sampling and flow monitoring of the wastewater flow from the NBP gravity line and force main separate from the Mid America Truck Wash wastewater.
 - 2) Incorporating a new bypass line to direct overflow from the NBP lift station to the existing overflow basin.
 - 3) Constructing a new bypass line for the Mid America Truck Wash force main to direct flow to the existing overflow basin.

B. Scope of PEC's Services.

PEC agrees to provide the various technical and professional services, equipment, material, and transportation to perform the Scope of Services set forth in Exhibit 'A'.

C. Anticipated Project Schedule.

1. PEC shall commence its services on the Project within 7 days after receiving CLIENT's notice to proceed.
2. CLIENT acknowledges that directed changes, unforeseen conditions, and other delays may affect the completion of PEC's services. PEC will not have control over or responsibility for any contractor or vendor's performance schedule.

D. PEC's Fees & Reimbursable Expenses.

1. PEC will invoice CLIENT one time per month for services rendered and Reimbursable Expenses incurred in the previous month. CLIENT agrees to pay each invoice within 30 days after receipt. Unpaid invoices will bear interest at the rate of 18% per annum.
2. PEC's Fee for its Scope of Services will be an aggregate lump sum total of \$168,900, including reimbursable expenses, based on the following fees per task:

Discipline	Design
Preliminary Design Services	\$ 7,320
60% Design Services	\$ 26,740
90% Design Services	\$ 15,760
100% Design Services	\$ 8,220
Bidding Services	\$ 3,440
Construction Services	\$ 107,420
Total	\$ 168,900

3. The fees for Construction Administration Service are based on what is anticipated to be seventy-five (75) calendar days for the contractor. Work is anticipated on Monday through Friday for ten (10) hours per day. If more than seventy-five (75) calendar days for the PROJECT elapse from the Construction Notice to Proceed to completion of the project PEC will be reimbursed at the PEC 2018 Standard Hourly Rates for the RPR services identified.
4. Labor for RPR services identified for more than 8 hours per day Monday through Friday, shall be reimbursed at 1.5 times the Standard Rate for the Construction Observer.
5. Reimbursable Expenses shall include digital scanning and printing by outside firms, deliveries made by outside services, personal vehicle mileage or vehicle rental and fuel for travel outside the county of the PEC office(s) providing design services, vehicle parking and tolls, travel fares (air/land/water), lodging, meals, and filing/permit fees.
6. Taxes are not included in PEC's Fees. CLIENT shall reimburse PEC for any sales, use, and value added taxes which apply to these services.

E. Client's Obligations. CLIENT agrees to:

1. Furnish to PEC any information currently available relative to existing and proposed improvements in the PROJECT area which may be pertinent to the PROJECT. Such information may include soil borings and geotechnical reports about subsurface conditions, hazardous conditions and/or history of site contamination, underground utilities, etc.

2. Provide right of entry for PEC's personnel in performing site visits, field surveys, and inspections.
3. Promptly review all preliminary study reports, drawings, recommendations, contract documents, and other data submitted by PEC, and to advise PEC of any desired corrections, modifications, or additions thereto.
4. Pay PEC for authorized additional work.

If CLIENT's Consultant's services under this Agreement do not include project observation or review of Contractor performance during construction activities, those services will be provided by CLIENT. In such case, CLIENT assumes all responsibility for interpretation of the Contract Documents and for design review, construction observation, and waives any claims against CLIENT's Consultant that may be in any way connected thereto.

F. Other Terms.

1. Upon payment in full of its Fee and Reimbursable Expenses, PEC grants to the CLIENT a nonexclusive license to use PEC's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project.
2. PEC will upon request deliver to the CLIENT prints of the completed plans and copies of electronic data files, and other pertinent drawings and documents for the Project. Upon delivery, PEC shall no longer be responsible for the contents of electronic files, their compatibility with CLIENT's CADD system, or file longevity. The CLIENT will have an acceptance period of 45 days following delivery of electronic data within which to review and accept the files. During this period PEC will correct any deficiencies as a part of this Agreement but shall not be required to develop or revise software as a corrective measure.
3. Both parties acknowledge that PEC's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event PEC or any other party encounters hazardous or toxic materials, or should it become known to PEC that such materials may be present on the jobsite that may affect the performance of PEC's services, PEC may, at its option and without liability for any damages, suspend on-site performance of its services under this agreement until the hazardous or toxic materials are removed and the owner warrants that the jobsite is in full compliance with all applicable laws and regulations. CLIENT waives any claim against PEC and agrees to indemnify, defend and hold PEC harmless from any claim or liability for injury or loss arising from unanticipated hazardous materials or suspected hazardous materials. CLIENT also agrees to compensate PEC for any time spent and expenses incurred by PEC in defense of any such claim, with such compensation to be based upon PEC's prevailing fee schedule and expense reimbursement policy.
4. PEC shall not have control, be in or charge of, or responsible for construction means, methods, techniques, sequences, schedules, safety precautions, or safety programs in connection with the Contractor's work, for the acts or omissions the contractor, its subcontractors or any other person performing any of the work, or for the failure of any of them to carry out the work in accordance with the construction documents.

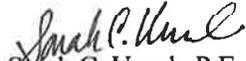
5. Since PEC has no control over the cost of labor, material or equipment, or over Contractor's methods of determining prices, or over competitive bidding or market conditions, any estimates of construction costs will be made on the basis of PEC's experience and qualifications, and represent PEC's judgment as a design professional familiar with the construction industry. PEC does not guarantee any accuracy when referencing the contractor's bids to PEC's probable cost of construction. If CLIENT desires greater assurance of probable cost of construction, it must retain a separate cost consultant or contractor.
6. PEC will make available during regular office hours at the Wichita office all calculations, sketches, and drawings such as the CLIENT may wish to examine periodically during performance of the Agreement.
7. Where payment is based on other than a lump sum fee, PEC agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such material available at PEC's office at reasonable times during the contract period and for three years from the date of final payment under the contract for inspection by the CLIENT or CLIENT'S authorized representatives.
8. PEC and CLIENT do not by this Agreement intend to make the public or any contractor, subcontractor or surety a third-party beneficiary of this Agreement.
9. The rights and remedies of the CLIENT and PEC provided for under this Agreement are in addition to any other rights and remedies provided by law.
10. PEC agrees to observe the provisions of the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act, and the applicable provisions of the American with Disabilities Act, and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry. In all solicitations or advertisements for employees, PEC shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Commission on Civil Rights.
11. PEC certifies that (a) it has not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above PEC) to solicit or secure this Agreement; (b) it has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; and (c) it has not paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for the above PEC) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement.

This letter, Exhibit 'A', and the attached "PEC Standard Conditions" comprise the entire agreement between the CLIENT and PEC. Our agreement may be altered only by supplemental agreement.

Mr. Ray Slattery
City of Dodge City
Wastewater System Improvements
November 29, 2017
Page 5

Thank you for contacting us to provide professional services for the Project. Should you have questions or if additional information is required, please do not hesitate to call. Return receipt of an executed copy of this letter will serve as our contract and notice to proceed with our services.

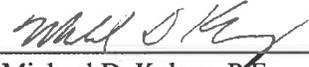
Sincerely,
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.


Sarah C. Unruh, P.E.
Project Manager

SCU:jcb

Enclosed: Attachment.

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By: 
Michael D. Kelsey, P.E.

Title: Principal

Date: November 29, 2017

ACCEPTED:

CITY OF DODGE CITY

By: _____

Title: _____

Date: _____

50/50
COST SHARE
BETWEEN CITY OF
DODGE CITY &
NATIONAL BEEF PACKERS, LLC
DME

NATIONAL BEEF PACKERS, LLC

By: 
DAVID M. KALSCHKEUR

TITLE: V.P. ENGINEERING

DATE: DEC. 18th, 2017

EXHIBIT A

A. Scope of Services:

1. Preliminary Design Services
 - a) Conduct a kick-off meeting to finalize the scope and schedule for the Project. Logistics such as communication, coordination, and CLIENT preferences will also be discussed during the kick-off meeting.
 - b) Prepare a data request for any needed system information, operational data, or other data needed to complete the design.
 - c) Prepare and submit preliminary concept plans for CLIENT review to include preliminary equipment location, equipment sizing, pipe sizing and alignment, and electrical service.
 - d) Review preliminary concept plans with the CLIENT in an on-site meeting.
2. 60% Design Services
 - a) Conduct a site topographic survey to include:
 - 1) Surveying proposed pipeline locations for connection of the existing pump stations and associated piping into the existing NBP gravity sewer.
 - 2) Surveying potential location for proposed NBP lift station and overflow bypass line, as required.
 - 3) Project Schedules and Management: Set Goals and monitor progress with office support, accumulate and assemble project data.
 - 4) Project research: Review record information and drawings for properties, utilities, survey control stations and vertical datum marks.
 - 5) Horizontal Control: Establish primary state plane Kansas south zone grid coordinates for project area, establish secondary control for topo data collect points. Reference all point for use by contractor's team.
 - 6) Vertical Control: Establish bench mark with in the project area at 600' intervals related to specific project datum.
 - 7) Utility research: Submit Kansas-1-Call work with company representatives to locate marks set in response to locate request, provide detailed information of sanitary sewers, storm water collection systems and water distribution systems, locate all marks and flag set for underground cables.
 - 8) Section Corners and Property Corners: Locate corners needed to draw section lines around project area, search for and locate property corners set by others.
 - 9) Plats, Maps, Research: Review plats and road records to aid in recovery of property corners needed to draw boundary parcels and right of Ways.
 - 10) Topo data collection: Topographic data collection of survey limits see attached, data collection of all surface feature adequate for surface modeling.
 - 11) Post Survey Review: Edit base map, surface model and transmit and archive survey files.

- b) Conduct a geotechnical investigation to include:
- 1) Development of geotechnical report in accordance with current engineering practices, that is sealed and signed by a Professional Engineer registered in the State of Kansas.
 - 2) The field exploration will include three (3) exploratory borings extending to a maximum depth of approximately twenty (20) feet below existing site grade, or auger refusal. Prior to establishing the final location of the borings, a site plan should be provided by the client.
 - 3) Sample depths of the subsurface materials will be determined based on the encountered materials, Shelby tubes or grab/bulk samples from auger cuttings depending on the conditions encountered in the borings.
 - 4) Where safety allows, boreholes will be left open to facilitate determining groundwater depths.
 - 5) Laboratory testing will be performed to determine the index and engineering properties of the soils. Anticipated laboratory testing of select samples obtained at the boring locations include moisture content, dry unit weight, Atterberg Limits, unconfined compressive strength testing, and percent passing the #200 sieve. Actual laboratory testing and quantity of testing may vary depending on soil types encountered.
 - 6) The geotechnical report will include exploratory boring logs, soil descriptions and classifications, groundwater elevations at the time of drilling, and laboratory test results.
 - 7) Geotechnical recommendations will include pavement design parameters including pavement thicknesses, subgrade treatment, and earthwork. Recommendations for construction of the proposed structures will include shallow foundation analysis, lateral earth pressures, seismic site classification and parameters, earthwork, and engineered fill recommendations.
 - 8) Boreholes will be plugged with sodium bentonite and capped with similar materials from the surrounding area. Removal of spoils and cleanup of the site will be the responsibility of the client unless other arrangements are made.
 - 9) Traffic Control is anticipated to be required for completion of portions of this project. It is our understanding that traffic control will be provided by the client and is not included in this scope of work. If at the clients request traffic control is to be provided by us, an additional fee will be required.
- c) Identify all utilities within the Project limits and coordinate resolution of potential conflicts with each utility company. All identified utilities will be shown on the 60% design plans.
- d) Determine easements required within the Project limits and prepare legal descriptions as required. Required easements will be shown on the 60% design plans.
- e) Prepare 60% design plans, specifications, and cost estimate, and submit to CLIENT for review.
- f) Determine permits needed from local, state, and federal entities for the Project.
- g) Review 60% design documents with the CLIENT in an on-site meeting.

3. 90% Design Services
 - a) Conduct design meetings to achieve 90% plans and specifications to include equipment selection, piping and connection details, structural details, electrical details, and instrumentation and control specifications.
 - b) Prepare permitting as required for CLIENT completion and submission. Anticipated permitting includes Kansas Department of Health and Environment.
 - c) Prepare a Stormwater Pollution Prevention Plan (SWPPP) and supporting documentation for the preparation of a Notice of Intent (NOI) permit application for submission by the City, if required.
 - d) Submit 90% design documents and cost estimate to the CLIENT for review.
4. 100% Design Services
 - a) Prepare sealed design documents and submit to KDHE for review and approval.
 - b) Address KDHE comments as required to achieve Project approval.
5. Bidding Services
 - a) Advertise the Project.
 - b) Distribute Project documents to bidders.
 - c) Conduct a pre-bid meeting.
 - d) Address bidder questions.
 - e) Issue addenda to bid documents as required.
 - f) Prepare an engineer's estimate and bid tab for the CLIENT.
 - g) Review received bids and make a recommendation to the CLIENT for award.
6. Construction Services
 - a) Review agreements between the City and NBP relating to or impacting the Project scope of work, as required.
 - b) Review Contractor submittals, pay applications, and respond to requests for information (RFIs).
 - c) Prepare Change Orders covering modifications or revisions necessitated by field conditions and CLIENT requests.
 - d) Make visits to the Project Site at intervals appropriate to the various stages of construction as deemed necessary to observe the progress that has been made and the quality of various aspects of the Contractor's executed Work.
 - e) Meet with the CLIENT at monthly progress meetings during construction to review progress on each part of the Project.
 - f) Project close-out to include a final inspection and preparation of record drawings. Record drawings to include marked and noted pdf files of the sealed Project documents.
 - g) Issue Certificate of Substantial Completion when the Project has been completed.
 - h) Provide Resident Project Representative (RPR) Services based on a construction time of 75 calendar days. RPR responsibilities are as follows:
 - 1) General
 - Serve as the Engineer's representative at the Site under direct supervision and direction of the Engineer.
 - Work with Subcontractors through or with the approval of the Contractor.
 - Communicate with the City under the direction of the Engineer, as required.

- 2) Schedules
 - Review schedules prepared by Contractor and consult with the Engineer concerning acceptability.
- 3) Conferences and Meetings
 - Attend meetings with Contractor, such as preconstruction meetings, progress meetings, job conferences, and other Project-related meetings.
- 4) Liaison
 - Serve as Engineer's liaison with Contractor.
 - Assist Engineer in serving as the City's liaison with the Contractor when Contractor's operations affect the City's on-site operations.
 - Assist in obtaining addition details or information from the City as required to properly execute the work.
- 5) Interpretation of Contract Documents
 - Consult with Engineer on required clarifications and interpretations of the Contract, as required, and transmit clarifications and interpretations to Contractor as issued by Engineer.
- 6) Shop Drawings and Samples
 - Record date of receipt of samples and Contractor-approved submittals.
 - Receive samples furnished at the Project Site and notify Engineer of availability of samples for examination.
 - Notify Engineer and Contractor if work commences on a portion of the Project requiring submittals without documentation of an approved submittal.
- 7) Modifications
 - Consider and evaluate proposed modifications to the design, confer with Engineer regarding proposed modifications, and transmit in writing any modification decisions issued by Engineer to the Contractor.
- 8) Review of Work and Rejection of Defective Work
 - Conduct on-site observations of Contractor's work in progress to assist Engineer in determining if the work is proceeding in accordance with Contract Documents.
 - Report to Engineer any issues the RPR has identified with the Contractor's work in progress and provide recommendations for how to address identified issues.
- 9) Inspections, Tests, and System Start-Ups
 - Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records.
 - Observe, record, and report the Engineer appropriate details relative to the test procedures and system start-ups.

10) Records

- Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- Record names, addresses, fax numbers, e-mail addresses, website locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- Maintain records for use in preparing Project documentation.

11) Reports

- Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- Draft and recommend to the Engineer any proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12) Payment Requests

- Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13) Certificates, Operation and Maintenance Manuals

- Verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to the City prior to payment for that part of the Work.

14) Completion

- Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.

- Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
- Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the work.

B. Responsibility of CLIENT:

The CLIENT agrees to provide the following pursuant to PEC accomplishing the Scope of Services outlined herein.

1. Provide information regarding the sanitary sewer system, pump stations, force mains, utilities, flows, operations, etc., as requested and available.
2. Provide any plans or reports available for proposed future improvements to the roadway and access drives to the NBP property.
3. Provide the following information relating to NBP:
 - a. Agreements between the City and NBP
 - b. Master planning for NBP proposed improvements
 - c. TV inspections of NBP piping
4. Participate in discussions and review meetings.
5. Review documents and provide comments and input.
6. Provide and coordinate access as required for Project needs.
7. Any required permit fees to be paid by CLIENT.

C. Additional Services:

The following services can be provided by PEC at an additional cost by Supplemental Agreement:

1. Design engineer construction site observations in excess of the number above will be performed on an hourly basis.
2. Analysis of existing utility systems.
3. Easement and right-of-way acquisition or vacation.
4. Platting or zoning requirements or changes.
5. Franchise utility coordination and routing.
6. Tree Survey/Identification Service.
7. Design of "Additional Services or Extra Services" as defined by CASE unless specifically agreed to. Additional services typically consist of site structures, screen walls, shoring, preparation of shop drawings, and review of value engineering and substitutions.
8. Production of structural steel shop drawings.
9. Photovoltaic design.
10. Specialty lighting design for landscape elements and building interiors and exteriors.
11. ALTA Land Title Surveys.
12. Construction Testing.
13. Construction Staking.
14. Plan revisions, as necessary, to reduce the cost of construction after issue of CD's. (Typically referred to "Value Engineering" or "VE".)
15. Design of retaining walls.
16. Telecommunications design – Voice, Data, and Video Distribution System.

D. Exclusions:

The following shall be specifically excluded from the Scope of Services to be provided by PEC:

1. Environmental assessments/clearances.
2. Fire protection design and drawings.
3. Outside consultants.
4. Special inspection services are not included in the scope of work, which may be required by building codes, building officials, or designers. Special inspections are a specific set of requirements that are generally not covered under standard observation services. Special inspections are usually required for structural elements of the project but may include other design disciplines and testing agencies. Any special inspection services required will be covered under a separate or supplemental agreement.
5. Alternate designs not specifically listed in the Scope of Services.
6. Special inspection services not included in the Scope of Work.
7. Studies or design for any other aspects of the sanitary sewer system, wastewater treatment system, access drives, roadways, etc. not specifically included in the Scope of Work. Known future improvements in the area associated with the roadway and access drives to the NBP property will be considered in design of the wastewater system improvements to avoid conflicts based on the information provided by the CLIENT.
8. Sampling or testing required in association with the Project not included in the Scope of Work.
9. Assisting with obtaining land or rights required for the location of any new collection system components other than as noted in the Scope of Work.
10. Modifications to or removal of the five existing NBP pump stations and associated collection piping.
11. Construction staking and As-Built surveying.
12. Preparing required environmental assessments/reviews.
13. Assistance in determining Project financing or funding.
14. NPDES permit or SWPPP inspections and documentation.
15. RPR services on Sundays, national holidays, or on Saturdays immediately following a Friday holiday or Saturdays immediately preceding a Monday holiday. Saturday work is not included in the fee but can be added by Change Order if the Owner authorizes the additional work.
16. Construction Materials Testing (aggregates, soils, asphalt, concrete, etc.).
17. Testing for Sanitary Sewer pressure, simulated flow, pipe deflection, video recording and log, manhole vacuum testing.

PEC STANDARD CONDITIONS

1. **STANDARD OF CARE:** Professional Engineering Consultants, P.A., its officers, directors, employees, agents, shareholders, partners, consultants, sub-consultants, contractor, and sub-contractors (collectively "PEC") shall provide professional services to Client, its officers, directors, employees, agents, owners, members, shareholders, partners, consultants, sub-consultants, contractors, and sub-contractors, (collectively "Client") according to the agreed upon scope of services. PEC will perform the services with the level of care and skill ordinarily exercised by other consultants of the same profession under similar circumstances at the time the services are performed, and in the same locality.

2. **USE OF DOCUMENTS:** Drawings, specifications, reports, programs, manuals, cost estimates, or other documents, including documents on electronic media, prepared under this Agreement are instruments of service and as such are only applicable to the subject PROJECT. Use of these documents for any other purpose without written authorization and consent of PEC is prohibited. PEC shall retain ownership thereof.

3. **INSURANCE:** PEC and the Client agree to each maintain statutory Worker's Compensation, Employer's Liability Insurance, General Liability Insurance, and Automobile Insurance coverage for the duration of this agreement. Additionally, PEC will maintain Professional Liability Insurance for PEC's negligent acts, errors, or omissions in providing services pursuant to this Agreement. If the Client is a design professional, then the Client agrees to maintain Professional Liability Insurance for its negligent acts, errors, or omissions in providing services pursuant to this Agreement. If a project is Design-Build, the Client and all subcontractors providing professional design or other services (e.g., architects, engineers, inspectors) shall maintain professional or similar liability insurance for claims arising from its negligent performance of said services. Proof of insurance shall be provided, upon request, prior to commencement of said services.

4. **NO GUARANTEE:** PEC does not provide a warranty or guarantee, express or implied, for any portion of the scope of services including drawings, specifications, reports, programs, manuals, cost estimates, or other documents of service. PEC does not warrant or guarantee any certification of the project, including any level of LEED certification. Items of beneficial use to the Owner, whether or not included in the contract documents, shall be paid for by the Owner. The provisions of this paragraph shall apply notwithstanding any statement or language contained in any other document or agreement that might be related to the project.

5. **INDEMNIFICATION/HOLD HARMLESS:** PEC agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client and its employees from any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) resulting from PEC's negligent acts, errors, or omissions through services provided pursuant to this Agreement by PEC or anyone for whom PEC is legally liable. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless PEC, its employees and sub consultants from any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) resulting from the negligent acts, errors, or omissions by Client or those contractors, subcontractors, consultants, or anyone for whom Client is legally liable, and arising from the project(s) that is the subject of this agreement. PEC is not obligated to indemnify the Client in any manner whatsoever for the Client's own negligence. If any liability, damages, or costs (including reasonable attorneys' fees and costs of defense) result from the concurrent negligence of PEC and the Client, this indemnification shall only apply to the extent of each party's proportion of the responsibility.

6. **DISPUTES:** Any action or claims arising out of or related to this Agreement or the project that is the subject of this Agreement shall be governed by Kansas law. Good faith negotiation and mediation are express conditions precedent to the filing of any legal action. Mediation shall be

conducted in accordance with the latest edition of the Construction Mediation Rules of the American Arbitration Association.

7. **ASSIGNMENT OR SUBLETTING OF CONTRACT:** Client shall not assign, transfer, or sublet any rights, duties, or interests accruing from this Agreement without the prior written consent of PEC. This Agreement shall be binding upon the Client, its successors and assigns.

8. **NON-PAYMENT/TERMINATION OF AGREEMENT:** If the Client fails to make payment for services and expenses within 30 days following receipt of an invoice, PEC may, after giving seven days written notice to the Client, without liability for delay charges, suspend services and withhold deliverables under this Agreement until PEC has been paid in full for all amounts due. Each party to this Agreement reserves the right to terminate the Agreement at any time, without cause, upon 15 days written notice and subject to payment to PEC for the value of services rendered and expenses incurred up to the time of termination.

9. **DIFFERING SITE CONDITIONS:** The conditions at the site are the property of the Client/Owner regardless of whether or not they could be identified by an investigation or exploration conducted according to the professional standard of care. A "Differing Site Condition" is a subsurface, hidden, latent, or physical condition at a project site/building not revealed by the site exploration, site investigation, or other information provided to the Client and which cannot be reasonably anticipated. Special risks occur whenever engineering is applied to identifying site/building conditions. Even a comprehensive investigation according to the professional standard of care may not detect all subsurface or site/building conditions. If PEC performs the services specified in the Contract in a manner reasonably conforming to the terms of the Contract and to the Standard of Care, then Client (1) waives all claims against PEC for Differing Site Conditions; and (2) agrees to indemnify and hold PEC harmless from all third-party claims for Differing Site Conditions, and to reimburse PEC for its attorneys' fees and costs incurred in defending the claim.

10. **EXTRA WORK:** Services not specified in the Scope of Services set forth in this Agreement or due to regulatory changes shall be considered "extra work". No "extra work" will be performed without additional compensation per a supplemental agreement. Engineer shall be given written notice along with a request for an estimate of the increase necessary to complete the work.

11. **FORCE MAJEURE:** The Client shall not hold PEC responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of PEC, or that could not have been reasonably foreseen and prevented including, but not limited to, fire, weather, floods, earthquakes, epidemics, war, riots, terrorism, strikes, and unanticipated site conditions.

12. **AGREEMENT SOLELY FOR PARTIES' BENEFIT:** This agreement is solely for the benefit of PEC and Client. Nothing herein is intended in any way to benefit any third party or otherwise create any duty or obligation on behalf of PEC or Client in favor of such third parties.

13. **LIMITATION OF LIABILITY:** To the fullest extent permitted by law, PEC's total liability to Client is limited to the greater of \$50,000 or two times PEC's fee, for any and all damages or expenses arising out of this Agreement from any cause(s) or under any theory of liability. In no event shall PEC be liable for consequential damages, including, without limitation, loss of use or loss of profits, incurred by Client or its subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

Memorandum

To: Cherise Tieben, City Manager
From: Nannette Pogue
Date: December 28, 2017
Subject: Audit Engagement Letter
Agenda Item: New Business

Recommendation: Approve the engagement letter for the audit of the City of Dodge City for the years ending December 31, 2017 and 2018

Background: This proposal from Kennedy McKee & Company LLP is to audit the City of Dodge City's financial statements for the years ending December 31, 2017 and 2018. The fees for these services will be based on actual time spent, plus other out-of-pocket costs not exceeding \$46,850 plus \$90 per hour for the audit of Federal financial assistance programs. The fee in 2015 for the years ending 2015 and 2016 was \$44,150 plus \$85 per hour for the audit of Federal financial assistance programs. The detailed audit objectives, management responsibilities and audit procedures are outlined in the attached audit engagement letter. Kennedy McKee & Company has been conducting the City's audit for the past several years. They have extensive background information on the City of Dodge City, know our organization and the financial policies and procedures, work well with the city employees and have done an excellent job.

Justification: Municipalities of our size are required to have an annual audit.

Financial Considerations: This is an annually budgeted item. Each year, the proposed fee is not to exceed \$46,850 plus \$90.00 per hour for federal financial assistance programs.

Purpose/Mission: To promote open communications.

Legal Considerations: None

Attachments: Proposed engagement letter .

Kennedy
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December 20, 2017

City of Dodge City
City Commission
Dodge City, Kansas 67801

We are pleased to confirm our understanding of the services we are to provide City of Dodge City, Kansas for the years ended December 31, 2017 and 2018. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements, of City of Dodge City as of and for the years ended December 31, 2017 and 2018. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement City of Dodge City's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to City of Dodge City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis.

We have also been engaged to report on supplementary information other than RSI that accompanies City of Dodge City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements as a whole:

- 1) Schedule of expenditures of federal awards.
- 2) Combining and individual fund financial statements.

Audit Objectives

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the basic financial statements as a whole. The objective also includes reporting on—

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the City Commission of the City of Dodge City. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements or the Single Audit compliance opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or may withdraw from this engagement.

Audit Procedures – General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures – Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

Audit Procedures – Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of City's major programs. The purpose of these procedures will be to express an opinion on City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Other Services

We will also assist in preparing the financial statements, schedule of expenditures of federal awards, and related notes of the City in conformity with U.S. generally accepted accounting principles and Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statements, schedule of expenditures of federal awards, and related notes services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for (1) designing, implementing, and maintaining effective internal controls, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review when fieldwork begins.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to [include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon OR make the audited financial statements readily available to intended users of the schedule of expenditures of federal awards no later than the date the schedule of expenditures of federal awards is issued with our report thereon]. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to [include the audited financial statements with any presentation of the supplementary information that includes our report thereon OR make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon]. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Audit Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of and sign the Data Collection Form that summarizes our audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audits.

The audit documentation for this engagement is the property of Kennedy McKee & Company LLP and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to a Cognizant of Oversight Agency for Audit or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Kennedy McKee & Company LLP personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release or for any additional period requested by the Cognizant Agency, Oversight Agency for Audit, or Pass-through Entity. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

Our fees for these services will be \$46,850 for each year plus \$90 per hour for the audit of Federal financial assistance programs. This fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to City of Dodge City and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

KENNEDY MCKEE & COMPANY LLP



John W. Hendrickson
Partner

RESPONSE:

This letter correctly sets forth the understanding of City of Dodge City.

By: _____

Title: _____

Date: _____

Base Contract for Sale and Purchase of Natural Gas

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

The parties to this Base Contract are the following:

PARTY A World Fuel Services, Inc.	PARTY NAME	PARTY B Dodge City, Kansas
605 North Highway 169 Suite 1200 Plymouth, MN 55441	ADDRESS	P.O. Box 880, 806 N. 2nd Ave Dodge City, KS 67801
www.wfscorp.com	BUSINESS WEBSITE	
	CONTRACT NUMBER	
60-603-6481	D-U-N-S® NUMBER	
<input checked="" type="checkbox"/> US FEDERAL: 76-0291977 <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: <input type="checkbox"/> OTHER:
Texas	JURISDICTION OF ORGANIZATION	
<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: _____	COMPANY TYPE	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: <u>Municipality</u>
	GUARANTOR (IF APPLICABLE)	TBD
CONTACT INFORMATION		
Same as Above ATTN: <u>Contract Administration</u> TEL#: <u>763-543-4600</u> FAX#: <u>763-201-5901</u> EMAIL: <u>natgascontracts@wfscorp.com</u>	<input checked="" type="checkbox"/> COMMERCIAL	Same as Above ATTN: <u>Brad Ralph</u> TEL#: _____ FAX#: _____ EMAIL: <u>Brad Ralph <bradr@dodgecity.org></u>
Same as Above ATTN: <u>Manager, Gas Operations</u> TEL#: <u>763-543-4601</u> FAX#: <u>763-543-4603</u> EMAIL: <u>nominations@kinectenergy.com</u>	<input checked="" type="checkbox"/> SCHEDULING	Same as Above ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____
Same as Above ATTN: <u>Contract Administration</u> TEL#: <u>763-543-4600</u> FAX#: <u>763-201-5901</u> EMAIL: <u>natgascontracts@wfscorp.com</u>	<input checked="" type="checkbox"/> CONTRACT AND LEGAL NOTICES	Same as Above ATTN: <u>Brad Ralph</u> TEL#: _____ FAX#: _____ EMAIL: <u>Brad Ralph <bradr@dodgecity.org></u>
Same as Above ATTN: <u>WFS VP of Land Credit</u> TEL#: <u>305-351-4733</u> FAX#: <u>305-392-5601</u> EMAIL: <u>JLightbourn@wfscorp.com</u>	<input checked="" type="checkbox"/> CREDIT	Same as Above ATTN: <u>Brad Ralph</u> TEL#: _____ FAX#: _____ EMAIL: <u>Brad Ralph <bradr@dodgecity.org></u>
Same as Above ATTN: <u>Contract Administration</u> TEL#: <u>763-543-4600</u> FAX#: <u>763-201-5901</u> EMAIL: <u>natgascontracts@wfscorp.com</u>	<input checked="" type="checkbox"/> TRANSACTION CONFIRMATIONS	Same as Above ATTN: <u>Brad Ralph</u> TEL#: _____ FAX#: _____ EMAIL: <u>Brad Ralph <bradr@dodgecity.org></u>
ACCOUNTING INFORMATION		
Same as Above ATTN: <u>Accounts Payable</u> TEL#: <u>763-543-4600</u> FAX#: <u>763-201-7818</u> EMAIL: <u>natgasinvoices@wfscorp.com</u>	<input checked="" type="checkbox"/> INVOICES <input checked="" type="checkbox"/> PAYMENTS <input checked="" type="checkbox"/> SETTLEMENTS	ATTN: _____ TEL#: _____ FAX#: _____ EMAIL: _____
BANK: <u>Bank of America</u> ABA: <u>026009593</u> ACCT: <u>8666687054</u> OTHER DETAILS: <u>Name on Acct: Kinect Energy, Inc.</u>	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: _____ _____

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

World Fuel Services, Inc.	Effective Date : ____ __, 2017
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This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. Any terms not defined herein shall have the meaning given to them in the Base Contract. The terms of this Transaction Confirmation shall be binding upon execution by the parties.

<p>SELLER: Dodge City, Kansas P.O. Box 880, 806 N. 2nd Ave Dodge City, KS 67801 Attn: Phone: FAX:</p>	<p>BUYER: World Fuel Services, Inc. 605 North Highway 169 Suite 1200 Plymouth, MN 55441 Attn: Contract Administration Phone: 763-543-4600 Fax: 763-543-4603</p>
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Contract Price: The price per MMBtu shall be equal to the Gas Daily NNG Demarcation index price as published by Platts or any successor-in-interest thereto, applicable to such calendar day under Daily Price Survey, Northern, Demarc, less transportation costs from Dodge City's NNG interconnect to NNG Demarcation.

Delivery Period: The "Delivery Period" shall commence when the Project begins producing Gas and shall continue until this Transaction Confirmation is replaced by subsequent agreements with parties able to utilize the environmental attributes associated with the Gas.

Performance Obligation and Contract Quantity: Subject to the Special Conditions set forth below, Buyer shall purchase all Gas produced from the Project for each Day of the Delivery Period up to the MDV (as defined below):

Firm (Fixed Quantity): ____ <u>0</u> MMBtus/day	Firm (Variable Quantity): x (Subject to the Special Conditions) <input type="checkbox"/> EFP	Interruptible:
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Delivery Point(s): The Delivery Point for Gas being sold hereunder shall be Dodge City's NNG interconnect. Buyer and Seller agree that Seller is solely responsible for all transportation and related pipeline charges, if any, for the transportation of Gas from Dodge City's NNG interconnect to NNG Demarcation and Buyer is solely responsible for all transportation and related pipeline charges for the transportation of the Gas at and after the NNG Demarcation, if any.

Special Conditions:

Product: Gas

Purpose of Transaction Confirmation

The purpose of this Transaction Confirmation is for Seller to sell and Buyer to purchase Gas from the Dodge City, KS Waste Water Treatment Plant ("WWTP") ("Project").

Definitions and General Terms and Conditions:

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

Seller shall have no firm or interruptible minimum quantity requirements.

Additional Event of Default:

Additional Termination Rights:

- By Either Party:

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

Seller: **Dodge City, Kansas**

By: _____

Title: _____

Date: _____

Buyer: **World Fuel Services, Inc.**

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 **World Fuel Services, Inc.** and [_____] , dated __, 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.

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 Base 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 deleted in its entirety and replaced with the following:

"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."

12. The following new Section 15.16 is added:

"Each party hereby waives and shall not assert a defense of sovereign immunity or similar defense that may be applicable to it or its assets in any proceeding or matter regarding any claim or dispute arising under or in connection with this Contract."

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.

WORLD FUEL SERVICES, INC.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

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:

Section 1.2 Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	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> _____ _____ _____
Section 2.7 Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> _____ Business Days after receipt	
Section 2.8 Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer <input type="checkbox"/> _____	
Section 3.2 Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	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
Note: The following Spot Price Publication applies to both of the immediately preceding.	
Section 2.31 Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	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
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	
Section 7.2 Payment Date <input checked="" type="checkbox"/> 25 th Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	Section 15.5 Choice Of Law <p style="text-align: center;">Minnesota</p>
Section 7.2 Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) <input type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	Section 15.10 Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
Section 7.7 Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input type="checkbox"/> Special Provisions Number of sheets attached: _____	
<input type="checkbox"/> Addendum(s): _____	

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

World Fuel Services, Inc.	<i>PARTY NAME</i>	[INSERT COUNTERPARTY LEGAL ENTITY NAME]
By: _____	<i>SIGNATURE</i>	By: _____
	<i>PRINTED NAME</i>	[Insert Name]
	<i>TITLE</i>	[Insert Title]

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.

<p>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</p> <p>Cover Standard:</p> <p>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.</p>
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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) <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top; padding: 5px;"> Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> 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 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> Interruptible: Up to _____ MMBtus/day </td> </tr> </table>		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
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: <div style="height: 100px;"></div>				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			