

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

Monday, May 1, 2023

7:00 p.m.

MEETING #5247

**Public is welcome although seats are limited for social distancing; or you can view as follows:**

1. Watch live on our Facebook page at [www.facebook.com/cityofdodgecity](http://www.facebook.com/cityofdodgecity)

2. Or watch it on our Vimeo page at [www.vimeo.com/cityofdodgecity](http://www.vimeo.com/cityofdodgecity).

The meeting will be archived on both sites to be viewed after the live video has ended.

## **CALL TO ORDER**

## **ROLL CALL**

**INVOCATION BY** Pastor Joshua Smith of Cross Connections

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC HEARING**

To Consider the Establishment of A Rural Housing Incentive District and Adoption of a Plan (United Village).

## **APPROVAL OF AGENDA**

## **PETITIONS & PROCLAMATIONS**

National Historic Preservation Month Proclamation

National Travel & Tourism Week Proclamation

National Train Day Proclamation

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

Safety Spotlight award presented by Ryan Reid, Director of Administration

## **CONSENT CALENDAR**

1. Approval of Special City Commission Meeting Minutes, April 14, 2023.
2. Approval of City Commission Meeting Minutes, April 17, 2023.
3. Appropriation Ordinance No.9, May 1, 2023.
4. Cereal Malt Beverage License:
  - a. Love's Travel Stops #558, 2505 E. Trail Street.

(On file in City Clerk's office)

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3794:** An Ordinance of the Governing Body of the City of Dodge City, Kansas, Establishing a Rural Housing Incentive District Within the City and Adopting a Plan for the Development of Housing and Public Facilities in Such District, and Making Certain Findings in Conjunction Therewith (United Village). Report by Mollea Wainscott, Assistant Director of Economic Development.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. Approval of Master Plans for Water & Sewer Plans of the City's Water Distribution System and Sanitary Sewer Collection System. Report by Ray Slattery, Director of Engineering.
2. Approval of STX Industrial Biogas Sales Agreement. Report by Tanner Rutschman, PE, City Engineer.
3. Approval of Special Assessment Proceedings for Milstock Addition Unit 2. Report by Nicole May, Finance Director.
4. Approval of Special Assessment Proceedings for Casa del Rio Addition. Report by Nicole May, Finance Director.
5. Approval of Special Assessment Proceedings – Candletree Addition Unit 6. Report by Nicole May, Finance Director.

## **OTHER BUSINESS**

## **STAFF REPORTS**

## **ADJOURNMENT**

## City of Dodge City Proclamation for National Historic Preservation Month 2023

WHEREAS, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

WHEREAS, the City of Dodge City is a treasure-trove of historic resources, including 20 local historic landmarks, 16 properties listed on the State Register of Historic places, a State and National Registered Historic Downtown District, 13 properties listed on the National Register of Historic Places; and

WHEREAS, historic preservation is inherently economically, environmentally, and socially sustainable, fostering a culture of reuse and maximizing the life cycle of all resources through conservation; and

WHEREAS, historic preservation is an effective tool for managing growth, sustaining development, revitalizing neighborhoods, fostering local pride, and maintaining community character while enhancing livability; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped the City of Dodge City and us as a people; and

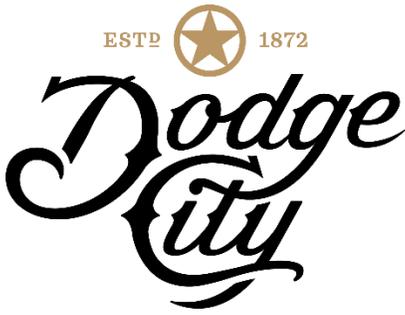
WHEREAS, historic preservation encourages community reinvestment, saving resources and promoting socially, culturally, and economically rich communities;

NOW, THEREFORE, I, Michael Burns, Mayor of the City of Dodge City, do recognize May 2023 as National Historic Preservation Month, and call upon the people of Dodge City to join their fellow citizens across the United States in recognizing and participating in this special observance.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



## PROCLAMATION

**WHEREAS**, travel has a positive effect on **Dodge City** and the **state of Kansas**' economic prosperity; and

**WHEREAS** the travel industry fuels every industry and will continue to be an essential part of Dodge City's economy, development and workforce; and

**WHEREAS** tourism is an economic driver, a business recruitment tool, and a building block for state and community pride for **Dodge City**; and

**WHEREAS** travel to and throughout Kansas provides significant annual economic benefits for the state, generating more than \$11.2 billion in direct and indirect business sales, including \$7 billion spent directly by travelers; and

**WHEREAS**, key indicators from the 2021 Economic Impact of Tourism in Ford County report show that leaders in the community are support the importance and growth of tourism in **Dodge City** and throughout **Ford County**, with visitors **spending \$151 million in Ford County**, which ranks **9<sup>th</sup>** among all counties in the state; and

**WHEREAS**, travel in Ford County generated **\$13.9 million** accruing to **state and local taxes** with the largest two categories of spending being **recreation at \$41.7 million and food & beverages at \$35.1 million** here in **Dodge City**; and

**WHEREAS**, the travel industry is the **4<sup>th</sup>** largest employer in **Dodge City**, supporting **1,499** jobs in **Dodge City** and resulting in **\$52 million** in wages and benefits; and

**WHEREAS** the travel industry is the heartbeat of our community and businesses, inviting visitors from around the globe to enjoy the experiences that only **Dodge City** can offer; and

**WHEREAS** welcoming visitors from near and far has always been, and always will be, the enduring spirit of the travel industry in Kansas.

**NOW, THEREFORE**, I, Michael Burns, Mayor, do hereby proclaim May 7-13, 2023 as

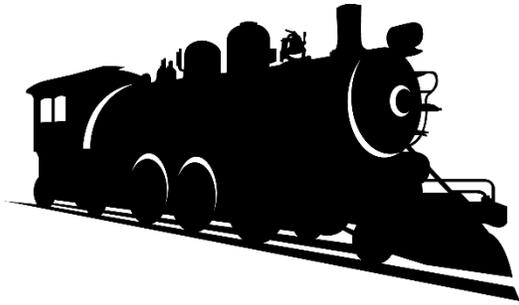
### NATIONAL TRAVEL AND TOURISM WEEK

**BE IT FURTHER RESOLVED** that the City of Dodge City with the aid of the Convention and Visitors Bureau, will hold a reception on **May 9th from 9:00 AM to 10:00 AM** at the Boot Hill Museum, **with complementary Historic Trolley Tours on that day at 10:30 AM and 1:30 PM** in observance of Travel and Tourism Week, and urge the citizens to join me in this special observance with appropriate events and activities.

**IN WITNESS THEREOF**, I have hereunto set my hand this 1st day of May, 2023

\_\_\_\_\_  
Michael Burns, Mayor

\_\_\_\_\_  
Connie Marquez, City Clerk



## NATIONAL TRAIN DAY PROCLAMATION

**WHEREAS**, Federal and State transportation departments have made expansion of high-speed and intercity passenger rail a top priority in building 21st-Century national infrastructure; and

**WHEREAS**, a healthy freight and passenger rail network is essential to keeping the American economy moving efficiently; and

**WHEREAS**, Dodge City has benefitted from train service on Amtrak's *Southwest Chief* route; and

**WHEREAS**, Amtrak continues to work with states on the development of the next generation of high-speed and intercity passenger rail trains which will create good jobs in the United States by resurrecting the domestic manufacturing base; and

**WHEREAS**, during FY 2022 (October 2021 - September 2022) Amtrak welcomed aboard more than 22.9 million passengers; and

**WHEREAS**, 3,519 passengers boarded or disembarked Amtrak trains in Dodge City during FY22;

**NOW, THEREFORE**, I, Michael Burns, Mayor, do hereby proclaim May 13, 2023 as

### NATIONAL TRAIN DAY

**IN WITNESS THEREOF**, I have hereunto set my hand this 1st day of May, 2023

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Michael Burns, Mayor

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Connie Marquez, City Clerk

# **SPECIAL CITY COMMISSION MEETING AGENDA**

City Commissioner Chambers

Friday, April 14, 2023

8:00 a.m.

Meeting #5245

## **CALL TO ORDER**

**ROLL CALL** Mayor Michael Burns, Commissioners Joseph Nuci, Rick Sowers, Chuck Taylor, Kent Smoll

## **PUBLIC HEARING**

Mayor Michael Burns opened the public hearing on the Community Development Block Grant (CDBG) for the Beeson Arboretum splash pad. Assistant City Manager/Public Affairs, Melissa McCoy spoke on how the location was selected. The budget for the splash pad would be \$750,000 and the city would be required to a 25% match which that match would be \$187,500. Parks and Facilities Director, Daniel Cecil spoke on the concepts of the splash pad. Assistant Director of Economic Development, Mollea Wainscott talked about the definition of the CDBG parks category is to increase opportunities for community engagement, health, connectedness, and vibrancy, to help low to moderate neighborhoods thrive. With the help of the Chamber of Commerce staff they choose an area where the neighborhood would most likely serve. Surveys were taken around the neighborhood. This public hearing is required to be part of the application that will be submitted.

There were no public comments. Mayor Burns closed the public hearing.

## **ORDINANCES & RESOLUTIONS**

1. Resolution No. 2023-13 – Approval of City of Dodge City application for Community Development Block Grant (CDBG) for the Beeson Arboretum Splash Pad was approved on a motion by Commissioner Kent Smoll. Commissioner Joseph Nuci seconded the motion. The motion carried unanimously.
2. Resolution No. 2023-14 - Assuring the City of Dodge City commitment for ongoing maintenance and operation of the splash pad was approved on a motion by Commissioner Kent Smoll. Commissioner Joseph Nuci seconded the motion. The motion carried unanimously.

**ADJOURNMENT**

Commissioner Joseph Nuci made a motion to adjourn the meeting. Commissioner Chuck Taylor seconded the motion the motion carried unanimously.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

Monday, April 17, 2023

7:00 p.m.

MEETING #5246

**Public is welcome although seats are limited for social distancing; or you can view as follows:**

1. Watch live on our Facebook page at [www.facebook.com/cityofdodgecity](http://www.facebook.com/cityofdodgecity)

2. Or watch it on our Vimeo page at [www.vimeo.com/cityofdodgecity](http://www.vimeo.com/cityofdodgecity).

The meeting will be archived on both sites to be viewed after the live video has ended.

## **CALL TO ORDER**

**ROLL CALL** Mayor Michael Burns reported absent. Vice Mayor Joseph Nuci, Commissioners Rick Sowers, Chuck Taylor, Kent Smoll present.

**INVOCATION BY** Pastor Heath Ormord of First Baptist Church

## **PLEDGE OF ALLEGIANCE**

## **APPROVAL OF AGENDA**

Commissioner Kent Smoll moved to accept the consent calendar as presented.

Commissioner Rick Sowers seconded the motion. Motion carried 4 - 0.

## **PETITIONS & PROCLAMATIONS**

Vice Mayor Joseph Nuci read the Arbor Day Proclamation and proclaimed April 18th as Arbor Day and urged all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and urged all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Parks and Facilities Director, Daniel Cecil talked about the tree planting events that will be taking place on April 18<sup>th</sup>. At 8:00 am there will be trees planted at the Beeson Arboretum on the north end, at 9:30 am at Arrowhead West north campus, 231 San Jose, for remembrance of all their clients that are no longer with us. Also, at 11:00 am at the south side of the Visitors Center, 500 W. Wyatt Earp a memorial tree will be planted in memorial of Jim Johnson. Jim was involved in many things in Dodge City. There will also be two projects, one in Wright Park with the 4-H members, also at the Golf Course. On May 2<sup>nd</sup> there will be planting of 15 trees.

**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**

Commissioner Rick Sowers asked to be recused from voting for the consent calendar.

1. Approval of City Commission Meeting Minutes, April 3, 2023.
2. Appropriation Ordinance No.8, April 20, 2023.
3. Cereal Malt Beverage License:
  - a. Fruteria Ramierz, 302 S. 2<sup>nd</sup> Avenue
  - b. La Tapatia Eatery & Grill, 1208 E. Wyatt Earp Blvd.  
(CMB applications on file in City Clerk's office)
4. Approval of Contract for Water Service at 11209 E. Comanche Road.

Commissioner Chuck Taylor moved to accept the consent calendar as presented.

Commissioner Kent Smoll seconded the motion. Motion carried 3 – 1 with Commissioner Rick Sowers recused.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3793:** An Ordinance of the City of Dodge City repealing and replacing language of Chapter 2 of the Dodge City Codes, Animal Control and Regulations was approved on a motion by Commissioner Rick Sowers moved to approve the ordinance pending legal counsels review and changes or additions. Commissioner Chuck Taylor seconded the motion. Motion carried 3 – 1 with Commissioner Smoll voting no.

**Resolution No. 2023-15:** A Resolution amending Resolution No. 2010-19 for the purpose of adding additional representatives to the cultural relations advisory board was approved on a motion by Commissioner Kent Smoll. Commissioner Rick Sowers seconded the motion. The motion carried 4 – 0.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. Commissioner Rick Sowers moved to approve the Cultural Relations Advisory Board Bylaws. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.
2. Commissioner Kent Smoll moved to approve the proposed GMP (Guaranteed Maximum Price) Earthwork Supplement from UCI for the expansion of the South WWTP in the amount not to exceed of \$7,256,549.86. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.

3. Commissioner Rick Sowers moved to approve KDOT's (Kansas Department of Transportation) agreement for mill & inlay of US 50 inside the city limits. Commissioner Kent Smoll seconded the motion. The motion carried 4 – 0.
4. Commissioner Kent Smoll moved to approve the bid from Building Solutions for asphalt street projects in the amount of \$1,347,807.50 and allow city staff to extend street reconstruction quantities in the amount of \$1,750,000. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.
5. Commissioner Rick Sowers moved to approve the Plat for Rodeo Hills North and Rodeo Hills North Subdivision. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.

Commissioner Joseph Nuci abstained from voting on Plat for Cottonwood Estates Subdivision.

6. Commissioner Chuck Taylor moved to approve the Plat for Cottonwood Estates Subdivision. Commissioner Kent Smoll seconded the motion. The motion carried 3 – 0 with Commissioner Nuci recused.
7. Commissioner Rick Sowers moved to approve the Plat for Lewis Third Addition. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.
8. Commissioner Rick Sowers moved to approve the Plat for J and A Properties. Commissioner Kent Smoll seconded the motion. The motion carried 4 – 0.

## **OTHER BUSINESS**

## **STAFF REPORTS**

## **ADJOURNMENT**

Commissioner Chuck Taylor moved to accept the consent calendar as presented. Commissioner Kent Smoll seconded the motion. Motion carried 4 - 0.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



# Memorandum

**To:** City Manager, City Commissioners  
**From:** Mollea Wainscott, Assistant Director of Economic Development  
**Date:** 04/26/23  
**Subject:** RHID  
**Agenda Item:** Development Agreement and Ordinance No 3794

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**Purpose:** To approve a Development Agreement and Development Plan creating a Rural Housing Incentive District between the City of Dodge City and Capital Development, LLC.

**Recommendation:** Staff recommends the approval of the Development Agreement between the City of Dodge City and Capital Development, LLC and approval of Ordinance 3794.

**Background:** In 2010, the City staff began working with developers interested in building multi-family and single-family residential developments. Most developers were interested in utilizing the Rural Housing Incentive District program which provides assistance for various eligible costs such as infrastructure. The Capital Development, LLC development will provide a total of two hundred and five single-family units (205) with an assessed valuation of not less than Two Hundred Thousand Dollars (\$200,000.00).

**City Commission Options:**

1. Approve
2. Disapprove
3. Table for further discussion

**Financial Considerations:** Ford County and U.S.D. No. 443 have no risk in this process; in addition, they would not have received the increment as the development would not have been feasible without the incentive.

**Legal Considerations:** None

**Mission/Values:** To provide adequate housing in order for the City to accommodate present and future growth.

**Attachments:** Development Agreement and Ordinance No. 3794

**Approved for the Agenda by:**

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Name, Title

**ORDINANCE NO. 3794**

**AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN FINDINGS IN CONJUNCTION THEREWITH (UNITED VILLAGE)**

**WHEREAS**, K.S.A. 12-5241 *et seq.* (the “Act”) authorizes any city incorporated in accordance with the laws of the state of Kansas (the “State”) with a population of less than 60,000 located in a county with a population of less than 80,000, to designate rural housing incentive districts within such city; and,

**WHEREAS**, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and,

**WHEREAS**, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein; and,

**WHEREAS**, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of Commerce of the State (the “Secretary”) requesting that the Secretary agree with the finding contained in such resolution; and,

**WHEREAS**, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development of housing and public facilities in the proposed district; and,

**WHEREAS**, the City of Dodge City, Kansas (the “City”) has an estimated population of approximately 27,340, is located in Ford County, Kansas, which has an estimated population of approximately 33,848, and therefore constitutes a city as said term is defined in the Act; and,

**WHEREAS**, the Governing Body of the City has performed a Housing Needs Analysis dated June 2022 (the “Needs Analysis”), a copy of which is on file in the office of the City Clerk; and,

**WHEREAS**, the Governing Body of the City has heretofore adopted Resolution No. 2022-38 which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a Rural Housing Incentive District pursuant to the Act and authorized the submission of

such Resolution and a Housing Needs Analysis to the Kansas Department of Commerce in accordance with the provisions of the Act; and,

**WHEREAS**, the Secretary of the Kansas Department of Commerce, pursuant to a letter dated November 1, 2022 authorized the City to proceed with the establishment of a Rural Housing Incentive District pursuant to the Act (the “District”); and,

**WHEREAS**, the City has caused to be prepared a plan for the development or redevelopment of housing and public facilities in the proposed District in accordance with the provisions of the Act (the “Plan”); and,

**WHEREAS**, the Plan includes:

1. The legal description and map required by subsection (a) of K.S.A. 12-5244;
2. The existing assessed valuation of the real estate in the proposed District, listing the land and improvement values separately;
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District;
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof;
5. A listing of the names, addresses and specific interests in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District;
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District;
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, set forth the boundaries of the proposed District, provided a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for May 1, 2023 and provided for notice of such public hearing as provided in the Act; and,

**WHEREAS**, the Governing Body of the City has heretofore adopted Resolution No. 2023-10 which made a finding that the City is considering the establishment of the proposed District and adopting the proposed Plan pursuant to the Act, set forth the boundaries of the proposed District, provides a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for May 1, 2023 and provided for notice of such public hearing as provided in the Act; and,

**WHEREAS**, a public hearing was held on May 1, 2023, after due published and delivered notice in accordance with the provisions of the Act; and,

**WHEREAS**, upon and considering the information and public comments received at the public hearing, the governing body of the City hereby deems it advisable to make certain findings to establish the proposed District and to adopt the proposed Plan.

**THEREFORE, BE IT ORDAINED** by the Governing Body of the City of Dodge City, Kansas as follows:

**Section 1. Findings.** The Governing Body hereby finds that due notice of the public hearing conducted May 1, 2023 was made in accordance with the provisions of the Act.

**Section 2. Creation of Rural Housing Incentive District.** A Rural Housing Incentive District is hereby created within the City in accordance with the provisions of the Act, which shall consist of the following described real property in the Development, an addition to the City of Dodge City, Ford County, Kansas:

Beginning at the Northwest corner of Block 4, Boto Addition to the City of Dodge City, Kansas; Thence on an assumed bearing of N 0° 13' 56" W, on the extension of the West Line of Boto Addition, a distance of 20.25 feet to the South Right-of-way Line of McArtor Road; Thence on a bearing of S 89° 58' 18" W, along the South Line of McArtor Road, 52.54 feet; Thence on a bearing of S 0° 30' 43" W, 351.17 feet; Thence on a bearing of S 89° 58' 18" W, a distance of 165.50 feet; Thence on a bearing of S 0° 20' 49" W, a distance of 128.00 feet; Thence on a bearing of S 89° 58' 18" W, a distance of 150.00 feet; Thence on a bearing of N 0° 20' 49" E, a distance of 128.00 feet along; Thence on a bearing of S 89° 58' 18" W, a distance of 93.30 feet; Thence on a bearing of S 61° 37' 24" W, a distance of 292.71 feet; Thence on a bearing of N 0° 20' 49" E, a distance of 1.00 feet, said point being the Southeast Corner of Cooper Addition to the City of Dodge City, Ford County, Kansas; Thence on a bearing of N 89° 56' 11" W, a distance of 23.00 feet along the Southerly Line of said Cooper Addition; Thence on a bearing of S 40° 28' 43" W, a distance of 217.60 feet along the Southerly Line of said Cooper Addition; Thence on a bearing of S 89° 19' 04" W, a distance of 594.80 feet along the South Line of Cooper Addition to the Southwest Corner of said Cooper Addition; Thence on a bearing of N 0° 17' 31" E, a distance of 9.92 feet along the West Line of said Cooper Addition; Thence on a bearing of S 89° 56' 47" W, a distance of 167.07 feet to the East Line of Veeann Avenue, said line of Veeann Avenue being the East Line of Miller Subdivision No.1 to the City of Dodge City, Ford County, Kansas; Thence north along the East Line of Miller Subdivision No.1 to the North of platted drainage ditch; Thence west along the North Line of said drainage ditch extended to the West Right-of-way line of 14th Avenue; Thence south along the West Right-of-way of 14th Avenue to the extended South Right-of-way Line of Mike Miller Parkway; Thence east along the extended South Right-of-way Line of Mike Miller Parkway to Northeast corner of Block 3 Miller Subdivision No.1; Thence south along the East Line of Block 3 Miller Subdivision No.1 to the Southeast Corner thereof, being the North Right-of-way Line of Merritt Road; Thence west along the North Right-of-way Line of Merritt Road extended to the West Right-of-way Line of 14th Avenue; Thence south along the West Right-of-way Line of 14th Avenue to the extended South Right-of-way Line of Merritt Road; Thence east along the extended South Right-of-way Line of Merritt Road to the Southeast Corner of Miller Subdivision No.1; Thence north along the East Line Of Miller Subdivision No.1 to the South Line of the Northwest Quarter of Section 2, Township 27 South, Range 25 West; Thence east along the South Line of said Northwest Quarter of Section 2 to the West Line of Boto Addition; Thence north along the West Line of Boto Addition to the Southwest Corner of Block 4, Boto Addition; Thence east along the South Line of said Block 4, Boto Addition extended to the East Right-of-way Line of Sunnyside Avenue; Thence Northerly along the East Right-of-way Line of Sunnyside Avenue to the intersection of the East Right-of-way Line of Sunnyside Avenue and the North Right-of-way Line of Beeson Road; Thence west along the North Right-of-way Line

of Beeson Road to the intersection of the North Right-of-way Line of Beeson Road and the West Right-of-way Line Sunnyside Avenue; Thence south along the West Right-of-way Sunnyside Avenue to the South Right-of-way Line of Beeson Road, being the Northeast Corner of Merritt Beeson Subdivision; Thence west along the North Line of Merritt Beeson Subdivision a distance of 95 feet to the Northeast Corner of Lot 2, Block 2, Merritt Beeson Subdivision; Thence south along the East Line of said Lot 2 to the Southeast Corner thereof; Thence continuing south parallel to the West Right-of-way Line of Sunnyside Avenue to the North Right-of-way Line of McArtor Road, being the North Line of Boto Addition; Thence west along the North Line of Boto Addition to the Northwest Corner thereof, and Point of Beginning.

The boundaries of the District do not contain any property not referenced in Resolution No. 2023-10, which provided notice of public hearing on the creation of the District and adoption of the Plan.

**Section 3. Approval of Development Plan.** The Plan for the development or redevelopment of housing and public facilities in the District, as presented to the Governing Body this date, is hereby approved.

**Section 4. Adverse Effect on Other Governmental Units.** If, within 30 days following the conclusion of the public hearing on May 1, 2023, any of the following occurs, the Governing Body shall take action to repeal this Ordinance:

- a. The Board of Education of U.S.D. No. 443 determines by resolution that the District will have an adverse effect on such school district; or
- b. The Board of County Commissioners of Ford County, Kansas, determines by resolution that the District will have an adverse effect on such county.

As of this date, the City has not received a copy of any such resolution and is not aware of the adoption of any such resolution by the governing body of Ford County or Unified School District No. 443.

**Section 5. Reimbursement.** The Act authorizes the City to reimburse the Developer for all or a portion of the costs of implementing the Plan through the use of property tax increments allocated to the City under the provisions of the Act.

**Section 6. Further Action.** The Mayor, City Clerk and other officials and employees of the City, including the City Attorney, are hereby further authorized and directed to take such other actions as may be appropriate to accomplish the purposes of this Ordinance.

**Section 7. Effective Date.** This Ordinance shall be effective upon its passage by the Governing Body of the City of Dodge City, Kansas and publication one time in the official City newspaper.

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**PASSED** by the Governing Body of the City of Dodge City, Kansas and signed by the Mayor on May 1, 2023.

[SEAL]

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Mayor

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City Clerk



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Ray Slattery, PE, Director of Engineering Services  
**Date:** May 1, 2023  
**Subject:** Approve Agreement for Water and Sewer Master Plans from PEC  
**Agenda Item:** New Business

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**Purpose:** Approve the agreement for new Water and Sewer Master Plans of the City's water distribution system and sanitary sewer collection system.

**Recommendation:** Approve the proposed Agreement for Water and Sewer Master Plans with PEC in the amount of \$83,250.00.

**Background:** The last Water and Sanitary Sewer Master Plans for the City were completed in 2000. Many of the recommendations outlined in that Water Master Plan were completed over the following years. A couple of major the recommendations outlined in that plan was to split the City's water system into zones to regulate pressure at the crest of the city (basically along Soule St.) to help with fire flow. Along with the construction of Water Tower #3 at Legend's Park. There were other minor improvements recommended in the master plan that have been implemented into the system. These improvements were one contributing factor in the City receiving a better score for fire protection which resulted in the citizens realizing savings on their insurance policies. With the Sanitary Sewer Master Plan, the recommendations were implemented, but not as originally outlined. The Sewer Master Plan called for a new North Dodge Lift station to be constructed so that the growth on the north side of the City could continue. The lift station was not constructed, but the Reclamation Plant was constructed to service this growth. Other projects were in one way or the other completed, the Sewer Mater Plan called for upgrades to the existing south Wastewater Treatment Plant (WWTP). Some of these projects were completed when the WWTP was expanded in 2004. Other recommendations will be completed with the current expansion. Like improvements to the primary and booster pump stations. There is still one project outstanding that will needs completed and I am sure will be outlined in any master plan completed in the future until the project is done. This is to construct a parallel sewer interceptor from the Trial St. and Juneau Ave. are to the Primary Pump Station.

The City entered into a contract with PEC to update the Sewer Master Plan in 2008. However, with the announcement that Dodge City was to be the location of one of the casinos, the Master Plan morphed into the design and construction of the North Reclamation Plant. With the design and construction of the Reclamation Plant the master plan was not completed.

With continued growth and projected growth with the Hilmar Cheese development, staff feels it is important to understand how our water and sanitary sewer infrastructure are functioning and what improvements are expected in the future. Therefore, it is important to complete the new Mater Plans. Staff has planned to update these Master Plans for a few years now, however other projects have pushed these plans off.

The City has worked with PEC for a number of years regarding our water and sanitary sewer infrastructure. PEC is familiar with our systems and operations. They have also helped on numerous occasions to determine

issues in the system, some at no charge to the City. PEC has a working model of our water system that can be used to determine pressure and flows in various parts of the City.

**City Commission Options:**

1. Approve
2. Disapprove
3. Table for further discussion

**Financial Considerations:** New Master Plans were included in the 2023 Budget from the Water and Wastewater Funds. There is \$175,000 budgeted for the Master Plans.

Amount \$: \$83,250.00

Fund: Water: 51041000 – 420003

Wastewater Collection: 52042100 – 420003

Budgeted Expense     Grant     Bonds     Other

**Legal Considerations:** By approving the Agreement the City will be responsible for payments to PEC for the work provided.

**Mission/Values:** This aligns with the City's Core Value of Ongoing Improvement, Safety, Working Towards Excellence.

**Attachments:** Agreement for Water Distribution and Sanitary Sewer collection Systems Mater Plans from PEC.

**Approved for the Agenda by:**



---

Ray Slattery, PE, Dir. of Engineering Services



April 10, 2023

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

Reference: AGREEMENT for Water Distribution and Sanitary Sewer Collection System Master Plans  
Dodge City, KS  
PEC Project No. 35-220193-000-1009

Dear Mr. Slattery:

Professional Engineering Consultants, P.A. (“PEC”) is pleased to provide professional services to City of Dodge City (“Client”) in connection with the referenced Project, and in accordance with this letter agreement (“Agreement”). The services to be performed by PEC (“the Services”) are described in Exhibit A – Services, Schedule, and Payment (attached and incorporated by reference) and are subject to the following terms and conditions.

**Performance.** 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 same time, and in the same locality. PEC agrees to perform the Services in as timely a manner as is consistent with the professional standard of care and to comply with applicable laws, regulations, codes and standards that relate to the Services and that are in effect as of the date when the Services are provided.

**Client Responsibilities.** To enable PEC to perform the Services, Client shall, at its sole expense: (1) provide all information and documentation regarding Client requirements, the existing site, and planned improvements necessary for the orderly progress of the Services; (2) designate a person to act as Client representative with authority to transmit instructions, receive instructions and information, and interpret and define Client requirements and requests regarding the Services; (3) provide access to, and make all provisions for PEC to enter the project site as required to perform the Services, including those provisions required to perform subsurface investigations such as, but not limited to, clearing of trees and vegetation, removal of fences or other obstructions, and leveling the site; (4) site restoration and repair, as needed following field investigations; (5) establish and periodically update a project budget, which shall include a contingency to cover additional services as may be required by changes in the design or Services; and (6) timely respond to requests for information and timely review and approve all design deliverables. PEC shall be entitled to rely on all information and services provided by Client. Client recognizes field investigations may damage existing property. PEC will take reasonable precautions to minimize property damage whenever field investigations are included in the Services.

**Payment.** Invoices will be submitted periodically and are due and payable upon receipt. Unpaid balances more than 30 days past due shall be subject to an interest charge at the rate of 1.5 % per month from the date of the invoice, and any related attorneys’ fees and collection costs. PEC reserves the right to suspend the Services and withhold deliverables if the Client fails to make payment when due. In such an event, PEC shall have no liability for any delay or damage resulting from such suspension.

**Work Product.** PEC is the author and owner of all reports, drawings, specifications, test data, techniques, photographs, letters, notes, and all other work product, including in electronic form, created by PEC in connection with the Project (the “Work Product”). PEC retains all common law, statutory, and other reserved rights in the Work Product, including copyrights. The Work Product may not be reproduced or used by the Client or anyone claiming by, through or under the Client, for any purpose other than the purpose for which it was prepared, including, but not limited to, use on other projects or future modifications to the Project, without the prior written consent of PEC. Any unauthorized use of the Work Product shall be at the user’s sole risk and Client shall indemnify PEC for any liability or legal exposure arising from such unauthorized use. To the extent PEC terminates this Agreement due to non-payment by Client shall not be entitled to use the Work Product for any purpose without the prior written consent of PEC.

Unless otherwise agreed by Client and PEC, Client may rely upon Work Product only in paper copy (“hard copy”) or unalterable digital files, with either wet or digital signature meeting the requirements of the governing licensing authority having jurisdiction over the Project. In all instances, the original hard copy of the Work Product takes precedence over electronic files. All electronic files furnished by PEC are furnished only for convenience, not reliance by Client, and any reliance on such electronic files will be at the Client sole risk.

**Insurance.** PEC and 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.

**Supplemental Agreements.** Changes in the Services may be accomplished after execution of this Agreement only by a written Supplemental Agreement signed by PEC and Client. For any change that increases PEC’s cost of, or time required for performance of any part of the Services, PEC’s compensation and time for performance will be equitably increased.

**Differing, Concealed, or Unknown Conditions.** If PEC encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the information provided to PEC or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities provided for in this Agreement, PEC will, if practicable, promptly notify Client before conditions are disturbed. Subsurface condition identification is limited to only those points where samples are taken. The nature and extent of subsurface condition variations across the site may not become evident until construction. PEC assumes no liability for site variations differing from those sampled or changed conditions discovered during construction. If the differing, concealed, or unknown conditions cause an increase in PEC’s cost of, or time required for performance of any part of the Services, PEC’s compensation and time for performance will be equitably increased.

Additionally, Client (1) waives all claims against PEC and (2) agrees to indemnify and hold harmless PEC as well as its respective officers, directors and employees, from and against liability for claims, losses, damages, and expenses, including reasonable attorneys’ fees from all third-party claims resulting from differing, concealed, or unknown conditions.

**Fast-Track, Phased or Accelerated Schedule.** Accelerated, phased or fast-track scheduling increases the risk of incurring unanticipated costs and expenses including costs for PEC to coordinate and redesign portions of the Project affected by the procuring or installing elements of the Project prior to the completion of all relevant construction documents, and costs for the contractor to remove and replace previously installed work. If Client selects accelerated, phased or fast-track scheduling, Client agrees to include a contingency in the Project budget sufficient to cover such costs.

**Force Majeure.** PEC will not be liable to Client for delays in performing the Services or for any costs or damages that may result from: labor strikes; riots; war; acts of terrorism; acts or omissions of governmental authorities, the Project Client or third parties; extraordinary weather conditions or other natural catastrophes; acts of God; unanticipated site conditions; or other acts or circumstances beyond the control of PEC. In the event performance of the Services is delayed by circumstances beyond PEC's control, PEC's compensation and time for performance will be equitably increased.

**Construction Means; Safety.** PEC shall have no control over and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for construction safety precautions and programs. PEC shall not be responsible for the acts or omissions of any contractor, subcontractor or any other person performing any work (other than the Services), or for the failure of any of them to carry out their work in accordance with all applicable laws, regulations, codes and standards, or the construction documents.

**Cost Estimates.** Upon request, PEC may furnish estimates of probable cost, but cannot and does not guarantee the accuracy of such estimates. All estimates, including estimates of construction costs, financial evaluations, feasibility studies, and economic analyses of alternate solutions, will be made on the basis of PEC's experience and qualifications and will represent PEC's judgment as a design professional familiar with the construction industry. However, PEC has no control over (1) the cost of labor, material or equipment furnished by others, (2) market conditions, (3) contractors' methods of determining prices or performing work, or (4) competitive bidding practices. Accordingly, PEC will have no liability for bids or actual costs that differ from PEC's estimates.

**Termination.** Both the Client and PEC have the right to terminate this Agreement for convenience upon fifteen calendar days' written notice to the other party. In the event the Client terminates this Agreement without cause, PEC shall be entitled to payment for all Services performed and expenses incurred up to the time of such termination, plus fees for any required transition services, and reimbursement of all costs incurred which are directly attributable to such termination.

**Environmental Hazards.** Client acknowledges that the Services do not include the detection, investigation, evaluation, or abatement of environmental conditions that PEC may encounter, such as mold, lead, asbestos, PCBs, hazardous substances (as defined by Federal, State or local laws or regulations), contaminants, or toxic materials that may be present at the Project site. Client agrees to defend, indemnify, and hold PEC harmless from any claims relating to the actual or alleged existence or discharge of such materials through no fault of PEC. PEC may suspend the Services, without liability for any damages, if it has reason to believe that its employees may be exposed to hazardous materials.

**Betterment.** PEC will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

**Dispute Resolution.** The Client and PEC will endeavor to resolve claims, disputes and other matters in issue arising out of this Agreement, the Project or the Services through a meet and confer session. The meeting will be attended by senior representatives of Client and PEC who have full authority to

resolve the claim. The meeting will take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meeting, the parties will exchange relevant information that will assist in resolving the claim.

If the parties resolve the claim, they will prepare appropriate documentation memorializing the resolution.

If the parties are unable to resolve the claim, PEC and Client agree to submit the claim to mediation prior to the initiation of any binding dispute resolution proceedings (except for PEC claims for nonpayment). The mediation will be held in Wichita, Kansas, and the parties will share the mediator's fees and expenses equally.

**Jurisdiction; Venue; Governing Law.** To the fullest extent permitted by law, PEC and Client stipulate that the Eighteenth Judicial District, District Court, Sedgwick County, Kansas is the court of exclusive jurisdiction and venue to determine any dispute arising out of or relating to this Agreement, the Project or the Services. PEC and Client further agree that this Agreement shall be construed, interpreted and governed in accordance with the laws of the State of Kansas without regard to its conflict of laws principles.

**Indemnity.** To the fullest extent permitted by law, Client and PEC each agree to indemnify and hold harmless the other, as well as their respective officers, directors and employees, from and against liability for claims, losses, damages, and expenses, including reasonable attorneys' fees, provided such claim, loss, damage, or expense is attributable to bodily injury, sickness, disease, death, or property damage, but only to the extent caused by the negligent acts or omissions of the indemnifying party, or anyone for whose acts they may be liable.

**Agreed Remedy.** To the fullest extent permitted by law, the total liability, in the aggregate, of PEC and PEC's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages, including, without limitation, attorneys' fees, arising out of or in any way related to this Agreement, the Services, or the Project, from any cause and under any theory of liability, shall not exceed PEC's total fee under this Agreement. In no event will PEC be liable for any indirect, incidental, special or consequential damages, including, without limitation, loss of use or lost profits, incurred by Client or anyone claiming by, through or under Client.

**Assignment.** Client will not assign any rights, duties, or interests accruing from this Agreement without the prior written consent of PEC. This Agreement will be binding upon the Client, its successors and assigns.

**No Third-Party Beneficiaries.** 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. Further, PEC assumes no obligations or duties other than the obligations to Client specifically set forth in this Agreement. PEC shall not be responsible for Client obligations under any separate agreement with any third-party.

**Entire Agreement.** This Agreement represents the entire and integrated agreement between PEC and Client and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended by a writing signed by PEC and Client.

**Severability.** If any provisions of this Agreement is determined to be unenforceable, in whole or in part, the remainder shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

Ray Slattery, P.E.  
City of Dodge City  
Dodge City Water Distribution and Sanitary Sewer Collection System Master Plans  
March 27, 2023  
Page 5

Thank you for engaging PEC; we look forward to working with you. If this Agreement is acceptable, please sign below and return an executed copy to me. Receipt of the executed copy will serve as PEC's notice to proceed with the Services.

Sincerely,

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.



Trevor B. Kaufman, P.E.  
Project Manager

TBK:cem

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

By:  \_\_\_\_\_, Signatory

Printed Name: Ryan W. Glessner, P.E.

Title: VP Civil Municipal and W/WW Engineering

Date: 4/13/2023

ACCEPTED:

CITY OF DODGE CITY

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

## **EXHIBIT A**

### **A. Project Description.**

1. The Project shall consist of preparing Water Distribution System and Sanitary Sewer Collection System Master Plans (collectively referred to as Master Plans). The planning period for the Master Plans shall be 20 years.

### **B. Anticipated Project Schedule.**

1. PEC shall commence its services on the Project within 14 days after receiving CLIENT's notice to proceed.
2. PEC and CLIENT anticipate that the draft Master Plans will be completed within 180 days after receiving Notice to Proceed. A detailed schedule will be determined with the CLIENT during the project kickoff meeting.
3. 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.

### **C. Project Deliverables.**

1. This Project Deliverables shall consist of the following sealed by an Engineer licensed in the State of Kansas where applicable:
  - a) Draft Master Plans Reports.
  - b) Final Master Plans Reports.

### **D. Scope of Services.**

1. Project Management:
  - a) Prepare an information request, coordinate information needs, and confirm assumptions as required to complete project tasks.
  - b) Conduct project Kick-off meeting.
  - c) Conduct a maximum of three virtual project progress meetings and two report review meetings with City Staff.
  - d) Prepare meeting agendas and distribute meeting minutes to all attendees.
2. Report Preparation and Presentation:
  - a) Preparation of draft report to include a discussion of data collected and field observations, analysis of the existing and future service areas, recommended improvements, cost estimates, and maps showing the general location of current and recommended system infrastructure for CLIENT review and comment.
  - b) Address CLIENT's comments for final reports.
  - c) Presentation of the master planning process, findings, and recommendations at one City Council meeting upon request.

### **Water Master Plan Design Services**

1. Data Collection:
  - a) Review data acquired during the Hilmar evaluation and determine additional or updated data required for this evaluation.
  - b) As required, obtain updated mapping of the existing distribution system from the CLIENT, and conduct interviews as needed with key staff familiar with the distribution system.
  - c) Collect updated water use data including average day use, peak daily use, peak hourly use, and usage information for large water consumers from CLIENT staff.
  - d) As required, obtain design and operations information pertaining to distribution supply connections, system pumps, storage facilities, and system controls from the Client.
  - e) Review existing studies, master plans, and comprehensive plans to be provided by the Client.
  - f) Perform fire hydrant flow testing to collect system flow and pressure data. The ENGINEER will establish eight (8) field test locations with Client input, provide flow testing equipment, perform field testing, and evaluate results. The Client shall provide staff to operate valves and inform residents of testing operations prior to and during testing as necessary. ENGINEER plans to provide 2 people to perform flow testing.
  
2. Projecting Population and Water Demands (20-Year Planning Period):
  - a) Utilizing existing plans and Client input, define the water distribution system service area.
  - b) Evaluate existing land use and population projections for the Client. Projections will be established for any neighboring entities/growth areas that are to be included in the defined service area.
  - c) Determine potential growth areas and projected future service areas.
  - d) Develop a base map that illustrates the existing service area and identifies the projected future service areas.
  - e) Review existing water demand data for the defined service area and determine appropriate residential flows per capita, and commercial/industrial unit flow data to be used for evaluation. Review the top water users and include analysis of their existing and future use.
  - f) Develop projections based on expected growth. Apply the peaking factors determined from current data to establish maximum day and peak hour flows through the planning period.
  
3. Dynamic Modeling and Evaluation:
  - a) Update and further develop the hydraulic model of the existing distribution system. The water model developed for Hilmar evaluation will be used with updates and additions as required. Hydrants and valves were not previously included. The model shall include:
    - i. A network of model segments consisting of waterlines 4-inches and larger. Additional lines shall only be included as needed to prepare a functioning model.
    - ii. Supply connections, water storage facilities, pump data, valves, fire hydrants, and system controls.

- iii. Existing and projected system demands.
    - b) Utilize the field-collected fire hydrant testing data and other system information to calibrate the model within reasonable accuracy of the existing system's actual performance.
    - c) Utilize the water model to analyze the system pressures, pipe velocities, operation, and available fire flows, under current and projected average day, maximum day, and peak hour demands. The model will be evaluated using both steady state and extended period simulations.
    - d) Evaluate fire hydrant coverage in the system.
    - e) Perform a system storage analysis to determine the recommended volume of storage for current and projected conditions.
    - f) Evaluate the available pumping capacity's ability to meet current and projected demands.
    - g) Identify current system deficiencies and future deficiencies based on the projected demands.
4. Distribution System Improvement Alternatives:
- a) Identify alternatives to address deficiencies and provide water distribution service to areas within the defined service area.
  - b) Alternatives will be developed to a planning level which will indicate general locations and sizes of major water lines, booster pump stations, and/or storage requirements. Considerations will be based on cost effectiveness and feasibility of construction.
  - c) Recommended improvement alternatives will be added to the model to evaluate impact to the system.
  - d) The alternatives will be presented to the CLIENT. Information will be revised and refined to incorporate CLIENT's input.
5. Establish Recommended Improvements Program with Estimated Costs:
- a) Determine estimated total project costs for all recommended improvements.
  - b) Determine priority of the recommended improvements based on need, feasibility of construction, capital costs, and maintenance costs.

**Sanitary Sewer Master Plan Design Services**

1. As required, obtain mapping of the existing collection system from the Client, and conduct interviews as needed with key staff familiar with the collection system. Collection system shall be considered all domestic gravity and pressure systems delivering flow to the North WWTP or the South Primary Pump Station.
2. Collect wastewater flow data of any existing meters including average day use, peak daily use, peak hourly use (if available) from CLIENT staff.
3. Obtain design and operations information pertaining to lift station pumps from the Client.
4. Review existing studies, master plans, and comprehensive plans to be provided by the Client.
5. Projecting Sewer Flows (20-Year Planning Period):
  - a) Utilizing existing plans and Client input, define the sewer collection system service area.

- b) Evaluate existing land use and population projections as established in the Water Master Plan tasks for the Client. Projections will be established for any neighboring entities/growth areas that are to be included in the defined service area.
  - c) Determine potential growth areas and projected future service areas. Growth areas will be limited to the domestic system.
  - d) Develop a base map that illustrates the existing service area and identifies the projected future service areas.
  - e) Review existing sewer flow data for the defined service area and determine appropriate flows per capita to be used for evaluation. Typical design flow rates as defined by Kansas Department of Health and Environment (KDHE) will also be considered in the evaluation of projected flows.
6. System Analysis:
- a) Use the existing and projected flows conveyed by the system to identify flow constrictions in the system with a desktop analysis. A computerized model of the existing sanitary sewer system will not be developed.
  - b) Evaluate lift station pumping capacities as compared to existing and projected flows.
7. Collection System Improvement Alternatives:
- a) Identify alternatives to address deficiencies and provide sewer collection to areas within the defined service area.
  - b) Alternatives will be developed to a planning level which will indicate general locations and sizes of sewer interceptors and lift stations. Considerations will be based on cost effectiveness and feasibility of construction.
8. Establish Recommended Improvements Program with Estimated Costs:
- a) Determine estimated total project costs for all recommended improvements.
  - b) Determine priority of the recommended improvements based on need, feasibility of construction, capital costs, and maintenance costs.

**E. Additional Responsibilities of CLIENT:**

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

- 1. Provide documents, sampling reports, treatment system drawings and operational data, and other system information as requested and available in a timely manner.
- 2. Provide access to system components upon ENGINEER's request.
- 3. Review submitted reports and documents in a timely manner.

**F. Additional Services:**

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

1. Design or assistance with implementation of any recommended improvements.
2. Evaluation of wastewater discharge and/or treatment.
3. Field survey or geotechnical investigations.
4. Evaluation of water supply.
5. Reviewing potential project funding sources for the recommended improvements.
6. Sanitary Sewer Flow Monitoring.
7. Sanitary Sewer Hydraulic Modeling.
8. Review of sanitary sewer system growth into the industrial system or outside of the domestic collection system area.

**G. Exclusions:**

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

1. Distribution system water quality evaluation including compliance with regulatory requirements associated with lead and copper, disinfection byproducts, or the Total Coliform Rule.
2. Water quality sampling or testing.

**H. PEC's Fees & Reimbursable Expenses.**

1. PEC's Fee for its Scope of Services will be on a lump sum basis in the cumulative amount shown in the table below:

<b>Scope Item</b>	<b>Fee</b>
Water Distribution System Master Plan	\$46,500.00
Sanitary Sewer Master Plan	\$36,750.00
<b>Totals</b>	<b>\$83,250.00</b>

2. 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.



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Tanner Rutschman, PE, City Engineer  
**Date:** May 1, 2023  
**Subject:** Industrial Biogas Sales Contract  
**Agenda Item:** New Business

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**Purpose:** This NAESB and transaction confirmation will establish a buyer for the City's industrial biogas stream. This three (3) year contract will guarantee a market and revenue from the industrial biogas processed at the Warrior Project.

**Recommendation:** Approve the NAESB and transaction confirmation with STX Commodities, LLC to purchase the environmental attributes of our industrial biogas stream at \$19/MMBtu and our industrial "brown gas" at NNG's demarcation index.

**Background:** The Warrior Biogas Facility receives and processes biogas from two feedstocks (municipal wastewater and industrial wastewater). The biomethane produced from these two sources is quantified and sold under contract to two different off-takers. The biogas produced from municipal wastewater is under contract to be purchased by Kwik Trip to fuel transportation vehicles with compressed natural gas and the industrial biogas is purchased to be converted to methanol and sold in Europe for automotive fuel blending. The current contract with OCI Fuels to purchase the industrial biogas terminates August 31<sup>st</sup>, 2023

In December 2022, World-Kinect (City's biogas marketer) solicited RFPs from potential off-takers interested in purchasing the industrial biomethane stream. Three competitive proposals were submitted. A bid summary sheet is attached for your review. In short, our current sales contract is for \$12.50/MMBtu (environmental attribute & brown gas) and we received bids ranging from \$17/MMBtu to \$19/MMBtu (environmental attribute) plus brown gas market price. The high bid came from STX Commodities and would represent an increase in industrial biogas sale price of nearly 70%. The bid includes an annual 1.5% escalator and the contract is a three year term with a two year extension option. STX plans to continue to sell our industrial gas stream to Europe and help maintain our ISCC certification.

## City Commission Options:

1. Approve NAESB & Transaction Confirmation
2. Reject NAESB & Transaction Confirmation
3. Table for further discussion

## Financial Considerations:

N/A

**Legal Considerations:** By approving the NAESB and transaction confirmation (contract) from STX Commodities, LLC, the City will be obligated to comply with the terms and conditions of the contract.

**Mission/Values:** The completion of this project aligns with the City's Core Value of Ongoing Improvement by preparing for the community's future.

**Attachments:** RFP bid comparison document, Transaction Confirmation, Special Provisions and NAESB.

**Approved for the Agenda by:**

*Ray Slattery, PE*

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**Ray Slattery, Dir. Of Engineering Services**



# Renewable Natural Gas Advisory

## City of Dodge City - Dodge City, KS Prepared: December 14, 2022

Advisory Sent To:  
Tanner Rutschman, City of Dodge City  
Ray Slattery, City of Dodge City

Advisory Prepared By:  
Jacob Hanson, Account Manager  
Jamie Nelson, Retail Energy Originat

### SITE DETAILS

The following account(s) were included in the recent Request for Proposal (RFP).

SITE DETAILS	
Service Name	City of Dodge City
Service Address	11079 Warrior Rd. Dodge City, KS 67801 (EPA ID No. 70201)
LDC Name	Northern Natural Gas
Meter No.	79338
Current Supplier Name	OCI Fuels
Current Contract Price (\$/Dth)	\$12.50/Dth
Annual Usage (Dth)	289,399
Contract End	08/31/23

### RECOMMENDATION

Green Molecule	STFX Fixed Income
Price (\$/Dth)	\$19.00/Dth
Projected Year-Over-Year Change in Price	
Unit Price (\$/Dth)	\$6.500 Increase
Total per Year (\$)	\$1,974,288 Increase
Value of Competitive Procurement*	
Unit Price (\$/Dth)	\$1.500
Total (\$)	\$455,606

### OFFER SUMMARY

Green Molecule	OCI Fuels	STFX Fixed Income	US Gain
Price (\$/Dth)	\$18.00/Dth	\$19.00/Dth	\$17.00/Dth
Projected Year-Over-Year Change in Price			
Unit Price (\$/Dth)	\$5.500 Increase	\$6.500 Increase	\$4.500 Increase
Total per Year (\$)	\$1,670,551 Increase	\$1,974,288 Increase	\$1,366,814 Increase

Note: Multiple suppliers were invited to participate in this RFP; however, these suppliers declined to submit bids.



# Renewable Natural Gas Advisory

## OTHER KEY FACTORS

OTHER KEY FACTORS	OCI Fuels	STFX Fixed Income	US Gain
<b>Performance</b>	Unit Contingent/Variable Delivery	100% of Production Offtake	100% of Production Offtake
<b>Existing Base Contract</b>	Yes	No	No
<b>Term</b>	3 years	3 and 5 years	5 years
<b>Minimum Volume Obligation</b>	Yes	Yes	Yes
<b>Certification</b>	ISCC EU Certification	ISCC EU Certification	Weaver or Eco Engineers
<b>Responsible Party</b>	Buyer pays audit expenses	Buyer pays audit expenses, prefer to work with World Kinect through process	US Gain pays for initial registration costs and would split ongoing compliance and monitoring costs equally between US Gain and Dodge City
<b>Other</b>	NA	1.5% annual escalator for environmental attributes	NA
<b>Right of First Refusal</b>	Yes	Yes	Yes
<b>Additional Volumes</b>	Yes	Yes	Yes
<b>Sample Contract</b>	Provided	Provided	Forthcoming

## PROJECTED USAGE

Please note that all volumes listed as Dth/Month

Month	Dodge City
January	17,050
February	15,400
March	17,050
April	16,500
May	17,050
June	16,500
July	17,050
August	17,050
September	16,500
October	17,050
November	16,500
December	17,050
<b>Total</b>	<b>200,750</b>

The prices and proposals contained in this advisory are based upon the market conditions existing at the time it was prepared and are subject to change until a definitive agreement is executed. Savings referenced in this document are based upon information available to World Kinect Energy Services at the time this advisory was prepared and the actual savings experience may differ. World Kinect Energy Services makes no guaranty that the recipient will achieve any of the savings described herein. Prior to implementing this advisory and/or executing any agreements related thereto, World Kinect Energy Services encourages the recipient to conduct an independent review of the supplier, if any, recommended herein. The information contained in this advisory is intended only for the use of the recipient(s) named herein. If you are not the intended recipient, you are hereby notified that the disclosure, copying, or distribution of the contents of the information contained herein is strictly prohibited. If you received this in error, please notify the sender by telephone at 763-543-4600, to arrange for return of the document.

Exhibit A

TRANSACTION CONFIRMATION

<p>Dodge City, Kansas</p>	<p>Effective Date: September 1<sup>st</sup>, 2023</p>
<p>This Transaction Confirmation is subject to that certain NAESB Base Contract and Special Conditions for Sale and Purchase of natural gas, between Seller and Buyer dated _____ (“Base Contract”). This Transaction Confirmation shall confirm and effectuate the agreement between Buyer and Seller regarding the purchase and sale of Gas under the following terms and conditions. Defined terms used but not defined herein shall have the meaning ascribed to them in the Base Contract. For purposes of this Transaction Confirmation, "Gas" as used in the Base Contract shall only include Biogas (as defined below as “Biogas” or “BG”).</p>	
<p><b>SELLER:</b>                  City of Dodge City, Kansas                  P O. Box 8801 806 N. 2nd Ave                  Dodge City. KS 67801                  Attn:                  Phone                  Fax:</p>	<p><b>BUYER:</b>                  STX COMMODITIES LLC                  11 Times Square, Floor 31                  New York, NY 10036                  Attn:                  Phone: 212-597-9430                  Fax:</p>
<p><b>Contract Price:</b></p> <p>A combination of the following:</p> <p>(a) The price for Environmental Attributes of the Biogas delivered hereunder shall be \$19.00 per MMBtu plus a compounded 1.5% yearly escalator increasing yearly on the anniversary of the effective date of the Contract (the “Environmental Attribute Price”).</p> <p><i>Plus</i></p> <p>(b) The commodity price of the Gas stripped of its Environmental Attributes at a price per MMBtu equal to the Gas Daily NNG Demarcation index price as published by Platts or any successor-in-interest thereto, applicable to such calendar month of the gas produced for the Northern, Demarcation Market Area, less transportation costs from the Biogas Supply Source to the Delivery Point. The Parties agree that there are no such transportation costs.</p>	
<p><b>Delivery Period:</b> The "Delivery Period" shall begin on September 1, 2023, and three (3) years after the Effective Date. Within 180 days of the end of the Delivery Period the Seller will notify Buyer if it wishes to extend the Agreement. At that time Seller will request a proposal from Buyer for the price to be paid under the same terms and conditions of the Agreement for a period of two additional years. Within thirty (30) days from receipt of the Seller’s notice, Buyer will provide its proposal and Seller will accept, deny or negotiate the proposal. If the Parties do not reach an agreement on such extension within thirty (30) days of Buyer’s proposal Seller will issue a request for proposal and Buyer will be free to participate.</p>	
<p><b>Performance Obligation and Contract Quantity:</b></p> <p>Subject to the Special Conditions set forth below. Seller shall sell to Buyer and Buyer shall purchase from Seller BG and the associated Environmental Attributes produced by the Biogas Supply Source and made available by Seller for sale to Buyer up to the Maximum Quantity, as described herein.</p> <p>Firm (Variable Quantity): Zero (0 ) MMBtus/Day (“Minimum Daily Quantity”)</p>	

550 MMBtu/day (“Maximum Daily Quantity”)

For clarity, Seller is obligated to deliver on a Variable basis all production from the Biogas Supply Source up to the Maximum Daily Quantity but Seller has no Minimum Daily Quantity that Seller must deliver. Biogas that is deemed Disqualified BG (as defined in the Special Provisions) may, at Buyer’s sole discretion, be rejected. The Parties will use commercially reasonable efforts to resolve disqualification as quickly as possible. If the occurrence of Disqualified BG is not due to a Force Majeure event or Change in Law Event, but due to the fault of Buyer, Buyer shall not have the right to cease taking delivery of such Disqualified BG, and Seller shall have the right to exercise its remedies under Section 3.2 of the Base Contract. In addition to any other remedies under the Base Contract, Buyer shall be entitled to a refund in an amount equal for the Environmental Attributes for the quantity of Disqualified BG, in each case to the extent actually paid to Seller.

If quantities of BG in excess of the Maximum Quantity become available, Buyer will have the right but not the obligation to purchase such additional quantities in excess of the Maximum Daily Quantity at the Contract Price. Buyer shall inform Seller within three business days after the end of the pertinent calendar month in which any delivery in excess of the Maximum Quantity has occurred that Buyer chooses not to make a purchase of the excess above the Maximum Quantity and upon such notification Seller shall be free to sell such excess to a third party.

The Parties agree that the production from the Biogas Supply Source may increase due to pending improvements in gas processing equipment in which case the quantity is likely to exceed the Maximum Daily Quantity on a consistent basis. The Parties agree that if during the first ninety (90) days after Seller notifies Buyer that such improvements have been installed and are working properly, the daily average deliveries during such ninety (90) day period exceed the Maximum Daily Quantity, they will amend the Maximum Daily Quantity such that the average of the daily delivered quantity over said ninety (90) days shall become the new Maximum Daily Quantity. The same procedure giving rise to an adjustment of the Maximum Daily Quantity will be undertaken during the ninety (90) days following notification by Seller to Buyer that the Hilmar Cheese factory has begun consistent deliveries of its effluent to the Biogas Supply Source digester. Such Hilmar deliveries are expected in the fourth quarter of 2024 or later. In the event that average production exceeds 1500 MMBtu per day during either of the 90 day periods described above, the Maximum Daily Quantity will be automatically set to 1500 MMBtu per day, such that the Parties must mutually agree in writing to any volume obligation for Buyer above that level.

Seller will provide monthly updates to Buyer regarding both the pending improvements in gas processing equipment and anticipated addition of effluent from the Hilmar Cheese factory. Parties acknowledge that Buyer must be afforded sufficient opportunity to prepare for increased volume obligations and these updates serve that purpose. Seller’s monthly updates must be reasonably thorough so that Buyer can prepare for both the timing and extent of future increases to the Maximum Daily Quantity.

**Monthly Biogas Nominations and Scheduling:**

In the case of the Variable Quantity, Seller will provide Buyer with its nominated monthly quantity of Biogas (Baseload Amount) for the delivery Month by no later than the twentieth (20<sup>th</sup>) Day of the Month prior to the delivery Month. Quantities will be nominated ratably over the course of the Month but Seller will have the option to change its daily nominations at the Delivery Point, for any delivery Day during the Month, as long as such nominations are made by Seller by no later than 8:00 a.m. Eastern Standard Time on the Day before the delivery Day. In the event of planned maintenance, Seller shall provide Buyer with written notice as soon as practicable with the change in its daily nominations. Weekend and holiday volumes will be nominated ratably over the Saturday – Monday or applicable period.

**Unit Conversions:**

For the avoidance of doubt, and with respect to common units used in ISCC and Biogas transactions, 1 MWh = 3.412 MMBtu.

**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 the Biogas Supply Source to the Delivery Point and Buyer is solely responsible for all transportation and related pipeline charges for the transportation of the Gas after the Delivery Point, if any.

**Biogas Supply Source:**

Biogas delivered to the Delivery Point shall be sourced from the following project:

Wastewater Treatment Plant (WWTP) gas processing facilities owned and operated by the City of Dodge City, Kansas in Dodge City, Kansas dedicated to effluent from the National Beef Plant and at a later point the Hilmar Cheese manufacturing plant having the annual ISCC certification code of EU-ISCC-Cert-NL220-22230120XX, where "XX" represents the last two digits that update with each annual audit. It is understood that the quantity of Biogas delivered to the Delivery Point for sale to Buyer is determined by allocating the Biogas entering the Northern Natural Gas Pipeline between the Biogas Supply Source and the separate RFS certified D3 digester Seller operates which receives municipal waste water and the allocation is determined based upon the volumes from each digester which are delivered to the gas clean up system pursuant to the EPA agreed protocol under the RFS. Notwithstanding the foregoing, if any production from the D3 digester fails to qualify for such D3 status under the RFS for any reason, including but not limited to the malfunction of meters or equipment necessary to separate the D3 digester production from the Biogas Supply Source, but so long as such production continues to qualify as Biogas, such production shall be included in any deliveries hereunder as if it was produced from the Biogas Supply Source.

**Conditions Precedent:**

If the following Conditions Precedent have not been satisfied by the performing party or waived by the other party on or before the Effective Date (except as otherwise expressly specified below), the other party may terminate this Transaction Confirmation on at least ten (10) Days prior written notice.

- a) Seller's Biogas Supply Source is commercially operable in accordance with industry standards and as mutually determined by the parties acting reasonably and in good faith;
- b) Seller has completed and satisfied all tests with respect to the Biogas to be sold and delivered and the Biogas is ISCC-EU Certified with a default or actual CI Score at or below 14;
- c) Seller has successfully completed and passed all tests on the Biogas as may be required by the pipeline that will receive and transport the Biogas related to the Biogas' quality, pressure and heat content; and
- d) Seller has procured all local, state, Federal and International regulatory approvals, permits, registrations, and authorizations necessary to comply with the representations, warranties and other requirements of this Transaction Confirmation including for air quality and environmental standards related to or in any way connected to the Biogas Supply Source by the first day of the Delivery Period.

**Special Conditions:**

1. Additional Definitions:

Defined terms used herein that are not defined in the Base Contract or otherwise defined in this Transaction Confirmation are listed below:

**"Applicable Law"** means any International, Federal, national, state or local law, statute, regulation, code, ordinance, license, permit, compliance requirement, decision, order, writ, injunction, directive, judgment, policy, decree, including any judicial or administrative interpretations thereof, or any agreement, concession or arrangement with any Governmental Authority, applicable to either party or either party's performance under this Transaction Confirmation, and any amendments or modifications to the foregoing.

**"Applicable Program"** means RED II, for which ISCC-EU Certification must remain valid.

**"Biogas" or "BG"** As used in this Transaction Confirmation Biogas shall be the biogas produced from the Biogas Supply Source that is pipeline quality gas meeting the standards of 40 CFR 72.2 applicable to "natural gas" generated from the conversion of raw WWTP biogas (being a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure that is produced through the conversion of organic matter present in the WWTP) at biogas processing facilities located at the WWTP compressed to more than 1 psi and injected into a commercial distribution system at the pressure required for injection by the distribution system; and contains all the Environmental Attributes associated with the use of a pipeline quality biogas. The parties agree that the Seller produces Renewable Fuel Standard D3 biogas in a separate digester from the digester producing BG. Under no circumstances will gas produced from such digester producing D3 biogas which is qualified under the Renewable Fuel Standard D3 be deemed BG hereunder.

**“Certification”** shall mean, if applicable, the certification by a Certification Authority of the Biogas under an Applicable Program.

**“Certification Authority”** shall mean an entity that certifies the eligibility of Biogas under an Applicable Program, which may include, as applicable, a governmental authority, one or both of the parties, an independent auditor, or other third-party.

**“Change in Law Event”** means:

- a) an action by a Governmental Authority that renders the Applicable Program unconstitutional, or unenforceable, including the issuance of an order, decision, or other legally binding action that enjoins, stays, suspends or otherwise restrains the legal effectiveness and implementation of the Applicable Program ; or
- b) the issuance of an order, decision, or other legally binding action that enjoins, stays, suspends or otherwise restrains the legal ability of ISCC-EU to implement the Applicable Program or that, as a result of such restraint on ISCC-EU, makes it impossible for either party to purchase or deliver compliance instruments, other than a sanction or penalty imposed for the failure to comply with the ISCC-EU program; or
- c) a Governmental Authority promulgates or enacts a law that repeals or otherwise amends the Applicable Program such that Seller is no longer obligated to comply with the Applicable Program, implementing agency is unable to implement or enforce the Applicable Program; or
- d) any other material modification to the Applicable Program or any new Applicable Law is enacted or existing Applicable Law is amended after the Effective Date, which individually or collectively could reasonably be expected to have a material effect upon the rights and obligations of a Party, as a whole, under this Transaction Confirmation, and which do not constitute a Force Majeure event.

**“CI”** means Carbon Intensity, which is the sum of emissions and emission reducing factors of the particular used to produce the batch of fuel, as defined in the REDII. The CI is expressed in grams of CO2 equivalent per Megajoule (gCO2eq/MJ).

**“Contract Price”** means the prices set forth in this Transaction Confirmation for Biogas and Environmental Attributes.

#### 2. Additional Terms and Conditions:

The Renewable Natural Gas delivered to Buyer will be ISCC -EU Certified with a corresponding default or actual CI score at or below 14. Proof of Sustainability (PoS) paperwork will be delivered alongside invoicing and any action on behalf of Seller that negates ISCC-EU certification will qualify as an Additional Event of Default. If, for a period of thirty (30) consecutive days, the default or actual CI Score of the delivered Renewable Natural Gas is above 14 (ISCC-EU), Buyer may terminate this Transaction Confirmation upon thirty (30) days' written notice without liability on the part of any Party, except that the Parties will remain obligated to pay the costs and expenses owed at the time of termination. If Seller is able to return the default or actual CI Score to a level at or below 14 within the thirty (30) day notice window, the Transaction Confirmation will continue in accordance with its terms.

Buyer retains the right to use, or re-sell for use, Biogas in Transportation Fuel and Seller will use commercially reasonable efforts to support RIN or LCFS credit generation, remarketing, and applicable Pathways as necessary, but associated costs would be the responsibility of the Buyer. Seller makes no representation as to whether the Biogas will qualify for a Pathway under the RFS for RIN generation or under the LCFS or any other Pathway other than the ISCC-EU.

Seller shall maintain all records relevant to (i) the production and purchase and sale of Biogas, (ii) Biogas transportation, distribution and (iii) the sale of the Biogas purchased hereunder as it applies to the requirements of the ISCC-EU.

#### 3. Additional Representations, Warranties and Covenants:

In addition to the representations and warranties set forth in the Base Contract, and notwithstanding any disclaimers of warranties set forth therein, Seller represents and warrants that:

- a) Seller is the entity that owns and operates the Biogas Supply Source.
- b) all Biogas sold and delivered to Buyer for purchase hereunder is ISCC-EU Certified Biogas with a corresponding default or actual CI Score at or below 14 and Seller will maintain valid ISCC-EU Certification for the Biogas Supply Source;

- c) Seller will deliver PoS paperwork monthly and will cooperate in providing additional information required by any applicable Governmental Authority or the Applicable Program;
- d) Seller holds the title to all Biogas, inclusive of the physical molecule and associated Environmental Attributes to be sold hereunder prior to delivery to Buyer free and clear of any liens or encumbrances or title defects and Seller will warrant and defend such title against the claims of all third parties;
- e) Biogas delivered at the Delivery Point shall meet the specifications of the applicable pipeline into which it is injected;
- f) Seller has not sold or agreed to sell the quantity of Biogas or any Environmental Attributes that it is obligated to sell Buyer hereunder to any other party except as expressly described in this Transaction Confirmation;
- g) Seller will not take any action that would impair the validity of the Environmental Attributes sold and delivered under this Transaction Confirmation; and
- h) upon sale of the Biogas by Seller to Buyer, Seller shall transfer all Environmental Attributes associated with such Biogas and the production thereof to Buyer.

Buyer may from time to time, upon reasonable notice and at reasonable times, request Seller to:

- a) provide documentation which verifies that Buyer is receiving all Environmental Attributes from the Biogas and that no Environmental Attributes associated with the Biogas are, or have been provided to any third parties; and
- b) In addition to the parties' rights to audit financial records as set forth in Section 7.6 of the Base Contract, either Party, at such Party's cost, shall have the right to audit, through an experienced environmental consultant of such Party's choosing, the other Party's processes and procedures in the generation of Environmental Attributes and the use of the Biogas as Transportation Fuel; provided, however, that such audit rights do not include access to financial information associated therewith except as necessary to verify amounts owed hereunder.

#### 4. Additional Events of Default:

It will be an additional Event of Default under Section 10.2 of the Base Contract, giving Seller the option to terminate, where Buyer:

- a) fails to timely pay any monthly invoice provided by Seller;
- b) commits any fraudulent act in connection with its purchase or use of the Biogas hereunder;
- c) makes any material misrepresentation under this Transaction Confirmation or materially breaches any representation under this Transaction Confirmation; or
- d) makes any material misrepresentation or inaccuracy or misleading statement in any supporting documentation, including, without limitation, registrations or any attestation related to Environmental Attributes generation based on Biogas purchased under this Transaction Confirmation.

It will be an additional Event of Default under Section 10.2 of the Base Contract, giving Buyer the option to terminate, where Seller:

- a) commits any fraudulent act in connection with its sale of the Biogas hereunder;
- b) makes any material misrepresentation under this Transaction Confirmation or the Base Contract or materially breaches any representation under this Transaction Confirmation or the Base Contract; or
- c) makes any material misrepresentation or inaccuracy or misleading statement in any supporting documentation, including without limitation, registrations or any attestation related to Environmental Attributes generation based on Biogas purchased under this Transaction Confirmation.
- d) any alteration or change whatsoever to the type of feedstock used at the Biogas Supply Source without the prior written consent of the Buyer. Such consent shall not be unreasonably withheld. It is understood that, upon

notification from Seller to Buyer and subject to the provisions in this Contract, beginning in 2024 the feedstock shall include effluent from the Hilmar Cheese Processing plant and such change will not require Buyer approval..

5. Change in Law and Early Termination Rights:

If a Change in Law Event occurs, then the Party directly affected by the Change in Law Event (the Affected Party) may notify the other Party at any time after the occurrence of such Change in Law Event that it desires for Seller and Buyer to renegotiate the Contract Price or other material terms or conditions so affected to appropriately pass through or otherwise address the effects of the Change in Law Event. The parties will attempt to preserve, to the maximum extent possible, the benefits, burdens and obligations set forth in this Transaction Confirmation as of the Effective date.

Such notice, for a Change in Law Event shall state the Change in Law Event and the terms upon which it is willing to continue to perform the Transaction Confirmation for the remainder of the Term. If the parties do not agree upon new prices or terms satisfactory to both within ninety (90) Days of the request to initiate negotiations between the Parties, acting reasonably and in good faith, either Party shall have the right to terminate and cancel the portion of this Transaction Confirmation which is affected by the Change in Law Event upon written notice to the other Party. In the event of any such termination, neither Party shall have any further payment or performance obligations under such terminated portion of this Transaction Confirmation; provided, however, that the parties shall remain liable for any payments due for, and all other obligations that may lawfully be performed prior to such termination. With respect to an early termination due to a Change in Law Event, neither party shall have any rights to, or obligations or liability for, payment of a termination payment under Section 10 of the Base Contract except with respect to payment obligations arising prior to the date of termination.

In addition to those events set forth in Section 10.2 of the Base Contract, as amended by this Transaction Confirmation, if (A) the transaction set forth in this Transaction Confirmation is determined or alleged (i) to fail to comply with any law, rule or regulation of any governing body having jurisdiction, or (ii) to conflict with any tariff regulations of any local distribution company in whose territory the transaction takes place, or (B) any applicable local distribution company takes any action to block or halt the transaction, and the Parties' good faith discussions to renegotiate the Transaction Confirmation to comply with such orders, requirements, regulations, directives or events while retaining and preserving the benefits of the Transaction Confirmation to both parties are neither successful by the date that is ninety (90) days after notice of (A) or (B) above, nor possible under such law, rule, regulation or claim, either Party may terminate this Transaction Confirmation on thirty (30) days prior written notice or such earlier time as the law, rule or regulation may require without further liability except that such termination shall not impact obligations under this Transaction Confirmation to make payments previously incurred.

7. Conflict:

In the event of any inconsistency between the Base Contract (as may be modified by Special Provisions) and this Transaction Confirmation, this Transaction Confirmation will govern.

8. Miscellaneous:

In the event NAESB releases an "RNG Addendum" to the Base Contract, the Parties will discuss and mutually agree whether it is prudent to change or supplement the terms of this Transaction Confirmation . Any addition of the RNG Addendum will preserve all benefits, burdens and obligations set forth in this Transaction Confirmation as of the Effective Date.

Seller: City of Dodge City, Kansas	Buyer: STX COMMODITIES LLC
Title:	Title:
Date:	Date:

# Base Contract for Sale and Purchase of Natural Gas

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

The parties to this Base Contract are the following:

PARTY A STX Commodities, LLC	PARTY NAME	PARTY B City of Dodge City, Kansas
c/o STX Commodities, LLC, 11 Times Square, 31 <sup>st</sup> Floor, New York NY 10036	<b>ADDRESS</b>	c/o Kinect Energy, Inc. 11100 Wayzata Blvd., Suite 200 Minnetonka, MN 55305
-	<b>BUSINESS WEBSITE</b>	WWW: _____
	<b>CONTRACT NUMBER</b>	
	<b>D-U-N-S® NUMBER</b>	
<input checked="" type="checkbox"/> US FEDERAL: 83-3363346 <input type="checkbox"/> OTHER:	<b>TAX ID NUMBERS</b>	<input checked="" type="checkbox"/> US FEDERAL: 48-6008416 <input type="checkbox"/> OTHER:
<b>New York</b>	<b>JURISDICTION OF ORGANIZATION</b>	<b>Kansas</b>
<input type="checkbox"/> Corporation <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	<b>COMPANY TYPE</b>	<input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input checked="" type="checkbox"/> Other: <b>Municipality</b>
N/A	<b>GUARANTOR (IF APPLICABLE)</b>	
CONTACT INFORMATION		
<u>11 Times Square, 31<sup>st</sup> Floor, New York NY 10036</u> ATTN: <u>Robert Cooleen</u> TEL#: <u>212-597-9439</u> FAX#: _____ EMAIL: <u>rcooleen@stxgroup.com</u>	▪ <b>COMMERCIAL</b>	<u>Same as Above</u> ATTN: <u>Contract Administration</u> TEL#: <u>763-543-4600</u> FAX#: <u>763-201-5901</u> EMAIL: <u>kinectnaconfirms@world-kinect.com</u>
<u>11 Times Square, 31<sup>st</sup> Floor, New York NY 10036</u> ATTN: <u>Robert Cooleen</u> TEL#: <u>212-597-9439</u> FAX#: _____ EMAIL: <u>rcooleen@stxgroup.com</u>	▪ <b>SCHEDULING</b>	<u>Same as Above</u> ATTN: <u>Manager, Gas Operations</u> TEL#: <u>763-543-4601</u> FAX#: <u>763-543-4603</u> EMAIL: <u>nominations@world-kinect.com</u>
<u>11 Times Square, 31<sup>st</sup> Floor, New York NY 10036</u> ATTN: <u>STX Legal</u> TEL#: <u>(212) 597-9428</u> FAX#: _____ EMAIL: <u>legal.nyc@stxgroup.com</u>	▪ <b>CONTRACT AND LEGAL NOTICES</b>	<u>Same as Above</u> ATTN: <u>Contract Administration</u> TEL#: <u>763-543-4600</u> FAX#: <u>763-201-5901</u> EMAIL: <u>kinectnaconfirms@world-kinect.com</u>
<u>Vijzelstraat 79 4th Floor, 1017 HG Amsterdam, Netherlands</u> ATTN: <u>STX Credit</u> TEL#: <u>+31 20 718 8988</u> FAX#: <u>( )</u> EMAIL: <u>CreditRisk@stxgroup.com</u>	▪ <b>CREDIT</b>	<u>Same as Above</u> ATTN: <u>Credit Administration</u> TEL#: <u>763-543-4600</u> FAX#: <u>763-201-5901</u> EMAIL: <u>kinectnacredit@world-kinect.com</u>
<u>11 Times Square, 31<sup>st</sup> Floor, New York NY 10036</u> ATTN: <u>Robert Cooleen</u> TEL#: <u>212-597-9439</u> FAX#: _____ EMAIL: <u>rcooleen@stxgroup.com</u>	▪ <b>TRANSACTION CONFIRMATIONS</b>	<u>Same as Above</u> ATTN: <u>Contract Administration</u> TEL#: <u>763-543-4600</u> FAX#: <u>763-201-5901</u> EMAIL: <u>kinectnaconfirms@world-kinect.com</u>
ACCOUNTING INFORMATION		
<u>11 Times Square, 31<sup>st</sup> Floor, New York NY 10036</u> ATTN: <u>STX Back Office</u> TEL#: <u>+1 (212) 597 9442</u> FAX#: _____ EMAIL: <u>backoffice.nyc@stxgroup.com</u>	▪ <b>INVOICES</b> ▪ <b>PAYMENTS</b> ▪ <b>SETTLEMENTS</b>	<u>PO Box 880, 806 N. 2<sup>nd</sup> Ave Dodge City, KS 67801</u> ATTN: <u>Accounts Payable</u> TEL#: _____      FAX#: _____ EMAIL: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	<b>WIRE TRANSFER NUMBERS (IF APPLICABLE)</b>	BANK: _____ ABA: _____      ACCT: _____ OTHER DETAILS: _____
BANK: _____ ABA: _____ ACCT: _____ OTHER DETAILS: _____	<b>ACH NUMBERS (IF APPLICABLE)</b>	BANK: _____ ABA: _____      ACCT: _____ OTHER DETAILS: _____
ATTN: _____ ADDRESS: _____	<b>CHECKS (IF APPLICABLE)</b>	ATTN: _____ ADDRESS: _____

# Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board Dated Sept. 5, 2006 (Revised\*08/06/2020) set forth below. 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:

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

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

<b>STX Commodities, LLC</b>	<i>PARTY NAME</i>	<b>City of Dodge City, KS</b>
By: _____	<i>SIGNATURE</i>	By: _____
	<i>PRINTED NAME</i>	
	<i>TITLE</i>	

# 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.

<b>The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.</b>
<b>Cover Standard:</b>
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.
<b>Spot Price Standard:</b>
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.				
<b>SELLER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	<b>BUYER:</b> _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$ _____/MMBtu or _____				
Delivery Period: Begin: _____, ____ End: _____, ____				
<b>Performance Obligation and Contract Quantity:</b> (Select One) <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top; padding: 5px;"> <b>Firm (Fixed Quantity):</b>                      _____ MMBtus/day  <input type="checkbox"/> EFP                 </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <b>Firm (Variable Quantity):</b>                      _____ 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;"> <b>Interruptible:</b>                      Up to _____ MMBtus/day                 </td> </tr> </table>		<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day
<b>Firm (Fixed Quantity):</b> _____ MMBtus/day <input type="checkbox"/> EFP	<b>Firm (Variable Quantity):</b> _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	<b>Interruptible:</b> Up to _____ MMBtus/day		
<b>Delivery Point(s):</b> _____ (If a pooling point is used, list a specific geographic and pipeline location):				
<b>Special Conditions:</b> _____ _____ _____				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nicole May, Finance Director  
**Date:** April 26, 2023  
**Subject:** Approval of Special Assessment Proceedings – Milstock Addition Unit 2  
**Agenda Item:** New Business

---

**Recommendation:** I recommend the City Commission approve the documents as presented which will accept the final costs for the Milstock Addition Unit 2 Special Assessment improvements and the documents that will notice the public and property owners of a public hearing to be set at the May 15 City Commission meeting.

**Background:** The City Commission previously approved Resolution No. 2022-13 which authorized improvements to be special assessed in Milstock Addition Unit 2. The construction of the improvements are now complete and we have the final numbers to approve. The special assessment process includes approving the final costs of the project, approving the assessment rolls, setting a public hearing for any comments regarding the assessments and causing the City Clerk to post notice of the public hearing in the newspaper and sending notices to the property owners.

**Justification:** The special assessment proceedings are required by State Statute.

**Financial Considerations:** The costs of the project will be bonded later in the year. Currently we have financed the improvements with Temporary Notes.

**Purpose/Mission:** To expand the infrastructure and development in the City.

**Legal Considerations:** None

**Attachments:** Exhibit A – Statement of Final Costs, Exhibit B – Assessment Roll Certification, Exhibit C – Notice of Public Hearing (to be published in the newspaper), Exhibit D – Notice of Hearing and Statement of Costs Proposed to be Assessed (to be sent to property owner)

Special Assessment Proceedings  
Milstock Addition Unit 2

Authorized by Resolution No. 2022-13

Attached documents:

- Exhibit A - Statement of Final Costs
- Exhibit B – Assessment Roll Certification
- Exhibit C – Notice of Public Hearing
- Exhibit D – Notice of Hearing and Statement of Costs proposed to be Assessed

EXHIBIT B

ASSESSMENT ROLL CERTIFICATION  
Milstock Addition Unit 2

The undersigned having been designated by the City of Dodge City, Kansas (the “City”), to determine the amounts of the respective assessments and to prepare the proposed Assessment Roll therefore in connection with certain internal improvements heretofore authorized by the City Commission, hereby reports that each and all of said respective assessments have been determined to be as shown on the Schedule(s) attached hereto and made a part hereof by reference as though fully set out herein.

Dated: May 1, 2023

CITY OF DODGE CITY, KANSAS

By \_\_\_\_\_

## EXHIBIT C

(Published in the Dodge City Daily Globe, on May \_\_\_\_, 2023)

### NOTICE OF PUBLIC HEARING

TO: RESIDENTS OF THE CITY OF DOGE CITY, KANSAS

You and each of you are hereby notified that the City Commission of the City of Dodge City, Kansas (the "City") will meet for the purpose of holding a public hearing, as provided by K.S.A. 12-6a01 et seq., at City Hall, 806 Second Avenue in the City, on May 15, 2023, at 7:00 p.m. Said public hearing is for the purpose of hearing any and all oral or written objections to proposed assessments in connection with the following described improvements: Milstock Addition Unit 2, Resolution No. 2022-13, design, inspection, and construction of the sanitary sewer manholes, gravity sanitary sewer main, water main, water valves, fire hydrants, streets, curbs and drainage serving Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 Milstock Addition, Unit 2, an addition to the City of Dodge City, Ford County, Kansas. Cost of Improvements – \$1,331,333.93; \$1,331,333.82 to be assessed to property owner and \$0 to be paid by the City at Large.

An assessment roll prepared in accordance with the referenced Resolution approved by the City Commission is on file in the Office of the City Clerk and may be examined by any interested party. At the conclusion of the public hearing, the City Commission will consider an Ordinance levying such special assessments.

Dated: May 1, 2023

Nicole May  
Finance Director

EXHIBIT D  
NOTICE OF HEARING  
AND  
STATEMENT OF COST PROPOSED TO BE ASSESSED

May 1, 2023  
Dodge City, Kansas

Property Owner:

You are hereby notified, as owner of record of the property described on Schedule I attached hereto, that there is proposed to be assessed against said property, certain amounts for the costs of certain internal improvements (the "Improvements") heretofore authorized by the City Commission of the City of Dodge City, Kansas (the "City"). The description of the Improvements, the resolution number authorizing the same and the proposed amount of assessment are set forth on Schedule I attached hereto.

You are hereby further notified that the City Commission of the City will meet on May 15, 2023, at 7:00 P.M., at City Hall, 806 Second Avenue, in the City, for the purpose of considering the proposed assessments.

The proposed Assessment Roll is on file in my office for public inspection. **WRITTEN OR ORAL OBJECTIONS TO THE PROPOSED ASSESSMENTS WILL BE CONSIDERED AT SAID PUBLIC HEARING.**

At the conclusion of the public hearing, the governing body of the City will consider an ordinance levying such special assessments. A subsequent Notice of Assessment will be mailed to affected property owners at that time indicating that each property owner may pay the assessment in whole or in part on or before June 30, 2023. Any amount not so paid on or before June 30, 2023, will be collected in 15 annual installments, together with interest thereon at the rate obtained by the City for its general obligation bonds issued to finance the costs of the Improvements.

Nicole May  
Finance Director

SCHEDULE I

Milstock Addition Unite 2, - Resolution No. 2022-13

<u>Description of Property</u>	<u>Amount proposed to be Assessed</u>
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 Milstock Addition, Unit 2, an addition to the City of Dodge City, Ford County, Kansas	\$1,331,333.93



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nicole May, Finance Director  
**Date:** April 26, 2023  
**Subject:** Approval of Special Assessment Proceedings – Casa Del Rio  
**Agenda Item:** New Business

---

**Recommendation:** I recommend the City Commission approve the documents as presented which will accept the final costs for the Casa Del Rio Addition Special Assessment improvements and the documents that will notice the public and property owners of a public hearing to be set at the May 15 City Commission meeting.

**Background:** The City Commission previously approved Resolution No. 2021-04 which authorized improvements to be special assessed in Casa Del Rio Addition. The construction of the improvements are now complete and we have the final numbers to approve. The special assessment process includes approving the final costs of the project, approving the assessment rolls, setting a public hearing for any comments regarding the assessments and causing the City Clerk to post notice of the public hearing in the newspaper and sending notices to the property owners.

**Justification:** The special assessment proceedings are required by State Statute.

**Financial Considerations:** The costs of the project will be bonded later in the year. Currently we have financed the improvements with Temporary Notes.

**Purpose/Mission:** To expand the infrastructure and development in the City.

**Legal Considerations:** None

**Attachments:** Exhibit A – Statement of Final Costs, Exhibit B – Assessment Roll Certification, Exhibit C – Notice of Public Hearing (to be published in the newspaper), Exhibit D – Notice of Hearing and Statement of Costs Proposed to be Assessed (to be sent to property owner)

Special Assessment Proceedings  
Casa Del Rio Addition

Authorized by Resolution No. 2021-04

Attached documents:

- Exhibit A - Statement of Final Costs
- Exhibit B – Assessment Roll Certification
- Exhibit C – Notice of Public Hearing
- Exhibit D – Notice of Hearing and Statement of Costs proposed to be Assessed

EXHIBIT B

ASSESSMENT ROLL CERTIFICATION  
Casa Del Rio Addition

The undersigned having been designated by the City of Dodge City, Kansas (the “City”), to determine the amounts of the respective assessments and to prepare the proposed Assessment Roll therefore in connection with certain internal improvements heretofore authorized by the City Commission, hereby reports that each and all of said respective assessments have been determined to be as shown on the Schedule(s) attached hereto and made a part hereof by reference as though fully set out herein.

Dated: May 1, 2023

CITY OF DODGE CITY, KANSAS

By \_\_\_\_\_

## EXHIBIT C

(Published in the Dodge City Daily Globe, on May \_\_\_\_, 2023)

### NOTICE OF PUBLIC HEARING

TO: RESIDENTS OF THE CITY OF DOGE CITY, KANSAS

You and each of you are hereby notified that the City Commission of the City of Dodge City, Kansas (the "City") will meet for the purpose of holding a public hearing, as provided by K.S.A. 12-6a01 et seq., at City Hall, 806 Second Avenue in the City, on May 15, 2023, at 7:00 p.m. Said public hearing is for the purpose of hearing any and all oral or written objections to proposed assessments in connection with the following described improvements: Casa Del Rio Addition, Resolution No. 2021-04, design, inspection, and construction of the sanitary sewer manholes, gravity sanitary sewer main, water main, water valves, fire hydrants, streets, curbs and drainage serving Lots 1 – 23, Casa Del Rio Addition, to the City of Dodge City, Ford County, Kansas. Cost of Improvements – \$805,231.63; \$805,231.63 to be assessed to property owner and \$0 to be paid by the City at Large.

An assessment roll prepared in accordance with the referenced Resolution approved by the City Commission is on file in the Office of the City Clerk and may be examined by any interested party. At the conclusion of the public hearing, the City Commission will consider an Ordinance levying such special assessments.

Dated: May 1, 2023

Nicole May  
Finance Director

EXHIBIT D  
NOTICE OF HEARING  
AND  
STATEMENT OF COST PROPOSED TO BE ASSESSED

May 1, 2023  
Dodge City, Kansas

Property Owner:

You are hereby notified, as owner of record of the property described on Schedule I attached hereto, that there is proposed to be assessed against said property, certain amounts for the costs of certain internal improvements (the "Improvements") heretofore authorized by the City Commission of the City of Dodge City, Kansas (the "City"). The description of the Improvements, the resolution number authorizing the same and the proposed amount of assessment are set forth on Schedule I attached hereto.

You are hereby further notified that the City Commission of the City will meet on May 15, 2023, at 7:00 P.M., at City Hall, 806 Second Avenue, in the City, for the purpose of considering the proposed assessments.

The proposed Assessment Roll is on file in my office for public inspection.  
**WRITTEN OR ORAL OBJECTIONS TO THE PROPOSED ASSESSMENTS WILL BE CONSIDERED AT SAID PUBLIC HEARING.**

At the conclusion of the public hearing, the governing body of the City will consider an ordinance levying such special assessments. A subsequent Notice of Assessment will be mailed to affected property owners at that time indicating that each property owner may pay the assessment in whole or in part on or before June 30, 2023. Any amount not so paid on or before June 30, 2023, will be collected in 15 annual installments, together with interest thereon at the rate obtained by the City for its general obligation bonds issued to finance the costs of the Improvements.

Nicole May  
Finance Director

SCHEDULE I

Casa Del Rio Addition, - Resolution No. 2021-04

Description of Property

Amount proposed to be Assessed

Lots 1- 23 Casa Del Rio,  
an addition to the City of Dodge City,  
Ford County, Kansas

\$805,231.63



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nicole May, Finance Director  
**Date:** April 26, 2023  
**Subject:** Approval of Special Assessment Proceedings – Candletree Addition Unit 6  
**Agenda Item:** New Business

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**Recommendation:** I recommend the City Commission approve the documents as presented which will accept the final costs for the Candletree Addition Unit 6 Special Assessment improvements and the documents that will notice the public and property owners of a public hearing to be set at the May 15 City Commission meeting.

**Background:** The City Commission previously approved Resolution No. 2021-03 which authorized improvements to be special assessed in Candletree Addition Unit 6. The construction of the improvements are now complete and we have the final numbers to approve. The special assessment process includes approving the final costs of the project, approving the assessment rolls, setting a public hearing for any comments regarding the assessments and causing the City Clerk to post notice of the public hearing in the newspaper and sending notices to the property owners.

**Justification:** The special assessment proceedings are required by State Statute.

**Financial Considerations:** The costs of the project will be bonded later in the year. Currently we have financed the improvements with Temporary Notes.

**Purpose/Mission:** To expand the infrastructure and development in the City.

**Legal Considerations:** None

**Attachments:** Exhibit A – Statement of Final Costs, Exhibit B – Assessment Roll Certification, Exhibit C – Notice of Public Hearing (to be published in the newspaper), Exhibit D – Notice of Hearing and Statement of Costs Proposed to be Assessed (to be sent to property owner)

Special Assessment Proceedings  
Candletree Addition Unit 6

Authorized by Resolution No. 2021-03

Attached documents:

- Exhibit A - Statement of Final Costs
- Exhibit B – Assessment Roll Certification
- Exhibit C – Notice of Public Hearing
- Exhibit D – Notice of Hearing and Statement of Costs proposed to be Assessed

EXHIBIT B

ASSESSMENT ROLL CERTIFICATION  
Candletree Addition Unit 6

The undersigned having been designated by the City of Dodge City, Kansas (the “City”), to determine the amounts of the respective assessments and to prepare the proposed Assessment Roll therefore in connection with certain internal improvements heretofore authorized by the City Commission, hereby reports that each and all of said respective assessments have been determined to be as shown on the Schedule(s) attached hereto and made a part hereof by reference as though fully set out herein.

Dated: May 1, 2023

CITY OF DODGE CITY, KANSAS

By \_\_\_\_\_

## EXHIBIT C

(Published in the Dodge City Daily Globe, on May \_\_\_\_, 2023)

### NOTICE OF PUBLIC HEARING

TO: RESIDENTS OF THE CITY OF DOGE CITY, KANSAS

You and each of you are hereby notified that the City Commission of the City of Dodge City, Kansas (the “City”) will meet for the purpose of holding a public hearing, as provided by K.S.A. 12-6a01 et seq., at City Hall, 806 Second Avenue in the City, on May 15, 2023, at 7:00 p.m. Said public hearing is for the purpose of hearing any and all oral or written objections to proposed assessments in connection with the following described improvements: Candletree Addition Unit 6, Resolution No. 2021-03, design, inspection, and construction of the sanitary sewer manholes, gravity sanitary sewer main, water main, water valves, fire hydrants, streets, curbs and drainage serving Lots 1, 2, 3, 4, 5 Block 1; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 Block 2; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 Block 3 Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 Block 4 Candletree Addition, Unit Six to the City of Dodge City, Kansas, Ford County, Kansas. Cost of Improvements – \$1,358,397.19; \$1,358,397.19 to be assessed to property owner and \$0 to be paid by the City at Large.

An assessment roll prepared in accordance with the referenced Resolution approved by the City Commission is on file in the Office of the City Clerk and may be examined by any interested party. At the conclusion of the public hearing, the City Commission will consider an Ordinance levying such special assessments.

Dated: May 1, 2023

Nicole May  
Finance Director

EXHIBIT D  
NOTICE OF HEARING  
AND  
STATEMENT OF COST PROPOSED TO BE ASSESSED

May 1, 2023  
Dodge City, Kansas

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Nicole May  
Finance Director

SCHEDULE I

Candletree Addition Unit 6, - Resolution No. 2021-03

<u>Description of Property</u>	<u>Amount proposed to be Assessed</u>
Lots 1, 2, 3, 4, 5 Block 1; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 Block 2; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 Block 3; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 Block 4 Candletree Addition, Unit 6, an addition to the City of Dodge City, Ford County, Kansas	\$1,358,397.19