



SPECIAL CITY COMMISSION MEETING AGENDA

Zoom Meeting
Tuesday, December 23, 2025
7:30 a.m.

MEETING # 5328

CALL TO ORDER

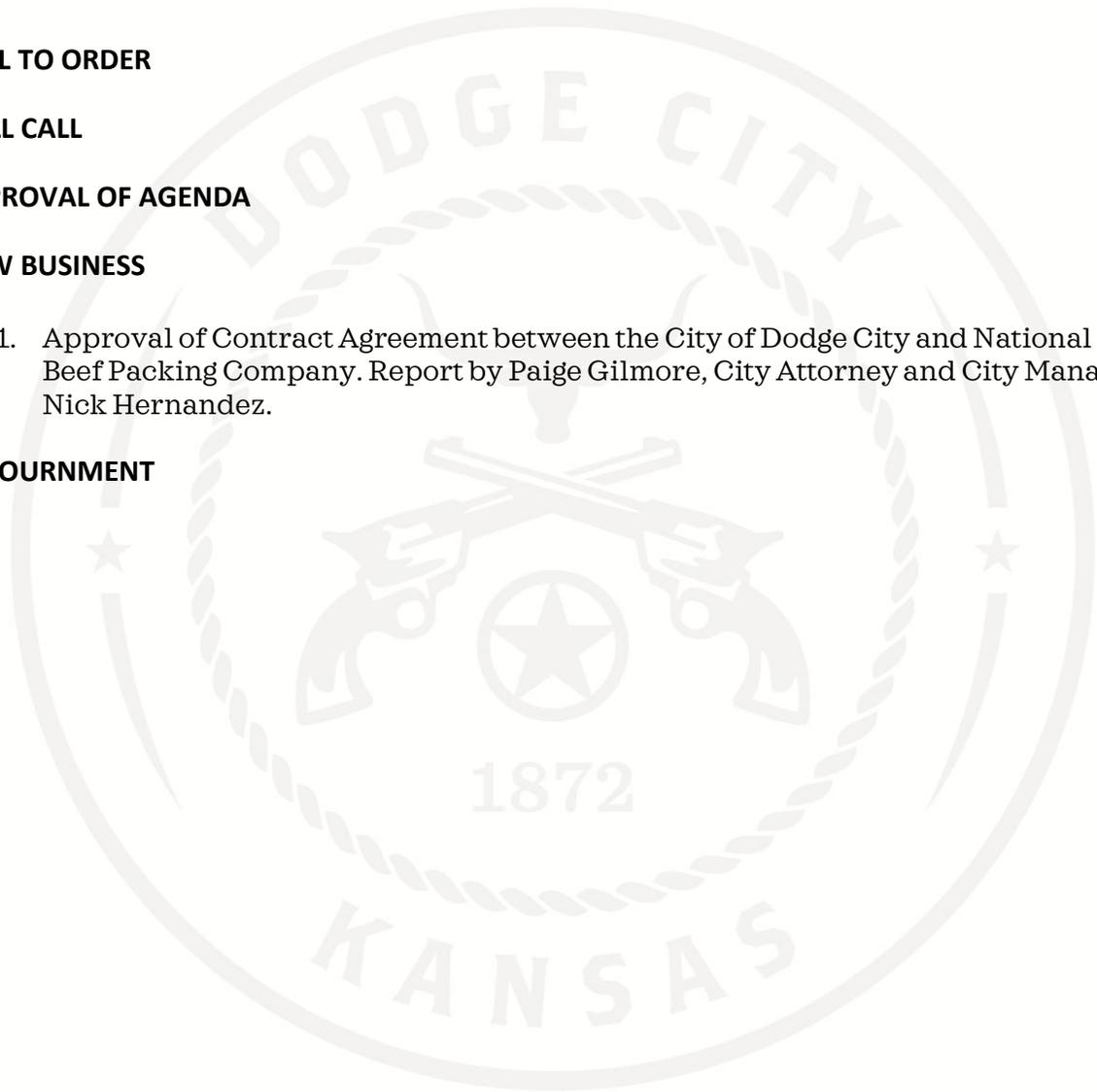
ROLL CALL

APPROVAL OF AGENDA

NEW BUSINESS

1. Approval of Contract Agreement between the City of Dodge City and National Beef Packing Company. Report by Paige Gilmore, City Attorney and City Manager, Nick Hernandez.

ADJOURNMENT





Memorandum

To: City Commissioners
From: Paige Gilmore, City Attorney
Date: December 23, 2025
Subject: Water Right Sale Contract
Agenda Item: New Business

Purpose: Sale of municipal-use water rights to National Beef Packing Company.

Recommendation: Staff recommends approval of the Agreement.

Background: This agreement provides for the sale of 574 acre-feet of water right currently owned by the City to National Beef Packing Company for \$3,500 per acre-foot for a total of \$2,009,000.00. Under this agreement, National will deliver the purchase price to the City on or before December 26, 2025. The City will hold these funds and will not otherwise encumber the same until closing is accomplished on or before December 18, 2026.

City Commission Options:

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

Financial Considerations: Upon closing, the City will be entitled to spend or otherwise encumber the purchase price of \$2,009,000.00

Legal Considerations: The contract has been reviewed by the City Attorney and is approved as to form.

Mission/Values: This aligns with the City's Core Values of Ongoing Improvement and Working Toward Excellence and making Dodge City the best place it can be.

Attachments: Water Right Sale Contract.

Approved for the Agenda by:



Paige Gilmore, City Attorney

December 22, 2025

WATER RIGHT SALE CONTRACT

This Purchase Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 2025, by and between the **City of Dodge City**, a municipal corporation organized under the laws of the State of Kansas (“City” or “Seller”) and **National Beef Packing Company**, a Delaware Limited Liability Company (“Buyer”), (collectively, “the Parties”).

RECITALS:

WHEREAS, Seller is the owner of a water right, meaning a vested right or appropriation right under which an owner may lawfully divert and beneficially use water, specifically described and incorporated herein in the attached **Exhibits A** (hereinafter, “Water Right”); and

WHEREAS, the Water Right(s) contemplated herein are presently categorized as agricultural use/irrigation; and

WHEREAS, the City has acquired the water right for municipal use; and

WHEREAS, Seller and the City wish to document the assignment and purchase of the Water Right and to provide for the necessary approval under the Kansas Water Appropriation Act (K.S.A. 82a-701 et seq.) and related regulations of the Kansas Department of Agriculture Division of Water Resources (“DWR”); and

WHEREAS, because the annual volume to be transferred is less than 2,000 acre-feet and the use change will be within the same general local area, the Parties believe that the Kansas Water Transfer Act (“KWTA”, K.S.A. 82a-1501 et seq.) does not apply; and

WHEREAS, the Parties intend to cooperate to apply for any change of use, point of diversion, or place of use required by DWR;

NOW THEREFORE, the Parties hereby agree as follows:

- 1. PURCHASE PRICE:** The Parties hereby agree the purchase price shall be \$3,500 per acre-foot of water right, subject to adjustment based on the final determination of the volume of water rights to be conveyed and successful completion of any other open due diligence. It is the Parties’ understanding that the water right being conveyed by Seller herein is comprised of 574 acre-feet of water rights. Therefore, the Parties agree the purchase price of two million nine thousand dollars (\$2,009,000.00) shall be good and sufficient consideration for the transfer of these rights.
- 2. ADJUSTMENT FOR DWR APPROVAL CONDITIONS.** The Parties acknowledge that DWR may impose conditions (metering, monitoring, well plugging, point of diversion modification, etc.) as part of its approval of the change of use. The cost of fulfilling such conditions shall be borne by the City.
- 3. CLOSING.** Closing shall occur on or before **December 18, 2026** or such other date as mutually agreed subject to the satisfaction of all conditions precedent within this Agreement.

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4. **TRANSFER PORTION.** Seller agrees to sell and hereby assigns to the Buyer 100% of the 574 acre-feet of water rights (the “Assigned Portion”)
5. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller represents and warrants as follows:
 - a. Seller is the lawful owner of the Water Right and has full right, title and interest to convey the Assigned Portion free of liens, claims or encumbrances (except those expressly disclosed in writing).
 - b. The Water Right is validly appropriated under Kansas law and is in good standing with the DWR; all required annual water-use reports have been timely filed, and no known administrative or judicial proceeding is pending to revoke/abandon the rights.
 - c. Seller has made available to the Buyer true and complete copies of all documents relating to the Water Right. (ex: permits, certificates, decrees, change-orders, use reports, etc.).
 - d. To Seller’s knowledge, the diversion works and place of use for the Water Right are in material compliance with the permit and certificate issued by DWR, and no major violations or unresolved notices of non-compliance exist.
 - e. Seller is working with a consultant to convert the water rights being sold from agricultural/irrigation to municipal use and will develop plans to meet the requirements of the City, the Kansas Department of Health and Environment (“KDHE”), and DWR for a municipal well or wells.
6. **REPRESENTATIONS AND WARRANTIES OF THE BUYER.** The Buyer represents and warrants that it is a corporation duly organized under the laws of the state of Delaware, has the power and authority to acquire the Water Right and to make application to DWR for any required change of use, place or diversion, and will undertake such actions in good faith.
7. **CONDITIONS PRECEDENT.** The following are agreed conditions precedent to the effective completion of this Agreement:
 - a. DWR Application. Within 365 days after the Effective Date of this Agreement, the Seller shall apply to DWR for a Change Application (to change the use from agricultural/irrigation to municipal, and/or the place of use and/or point of diversion if applicable). The form and filing fee shall be submitted by the City.
 - b. Approval or Acceptance. Closing and assignment are conditioned upon (i) DWR issuing written approval (or issuance of a draft Order) authorizing the change of use or other modification required for the Assigned Portion, and (ii) the Buyer’s acceptance of any conditions imposed by DWR.
 - c. Due Diligence. The Buyer shall review title, water-right condition, history of use, hydrogeological or regulatory impacts and shall determine whether such review is satisfactory within its sole discretion. In the event the review is unsatisfactory, the Buyer shall not be obligated under this Agreement.
 - d. No KWTA Trigger. The Parties have determined that the KWTA is not triggered by this Agreement because the annual volume is less than 2,000 acre-feet and the place

of use/point of diversion change is not more than 35 miles. If at any time KWTA applicability is questioned by DWR or intervenors, the Parties shall negotiate in good faith and may terminate or renegotiate this Agreement.

8. COST SHARING FOR CONVERSION AND WELL DEVELOPMENT.

- a. Partnership on Costs. The Parties agree to partner with the City on the reasonable and documented costs of conversion and development of the municipal well(s) associated with the rights sold to the Buyer, including planning, permitting, design, construction, metering, monitoring, and related regulatory compliance costs directly attributable to the Assigned Portion, subject to the limitations contained herein.
- b. Allocation. As between the Parties, (a) costs expressly imposed by DWR as part of its approval of the change of use for the Assigned Portion shall be shared by the Parties as follows: 50% shall be borne by the Seller and 50% by the Buyer; and (b) costs relating solely to the City's retained or future municipal use unrelated to the Assigned Portion shall be borne by the City. The Parties agree in good faith to reconcile and true-up cost allocations at Closing and, if necessary, post-Closing within 30 days of receipt of final invoices or orders.

9. ASSIGNMENT AND CONVEYANCE. Upon the Closing Date, Seller hereby assigns, transfers, and conveys to the Buyer the Assigned Portion of the Water Right, together with all rights, title and interest including beneficial use, priority date, and appurtenances thereto. Seller shall execute and deliver to the Buyer such further instruments, documents and causes of action as reasonably requested by the Buyer to effectuate registration or recordation of the assignment and any DWR filings.

10. RECORDING. The Buyer shall record or cause to record the assignment in the appropriate county's Register of Deeds and such recording costs shall be borne by the Buyer.

11. CLOSING PROCEDURES.

- a. Closing Date. The "Closing Date" shall be December 18, 2026 or such other date as mutually agreed when all conditions precedent in this Agreement have been satisfied or waived.
- b. At Closing: Seller will deliver all documents reasonably requested and required to effectuate the closing. The Seller will deliver executed application materials or evidence of filing to DWR. The Buyer will deliver its portion of the Closing Costs.
- c. Closing Costs.
 - i. SELLER'S EXPENSE: All costs of releasing existing loans and recording the releases, preparation of Deed, one-half of closing fees and other expenses stipulated to be paid by Seller under other provisions of the Contract, Seller's own attorney fees.
 - ii. BUYER'S EXPENSES: All expenses incident to any funding arrangement for the purchase, one-half of closing fees, recording fees, the Buyer's own attorney fees, and expenses stipulated to be paid by Buyer.

d. Payment Mechanics.

- i. Early payment of Purchase Price. Buyer shall deliver to Seller on or before **December 26, 2025** the Purchase Price. Seller shall hold and account for the Purchase Price in its own distinct fund and shall not use, pledge, encumber or otherwise transfer the Purchase Price until after Closing. Any interest or earnings accrued on this deposit shall accrue for the Seller.
- ii. Deficiency Notice. If Buyer reasonably determines any Condition Precedent has not been satisfied when required under this Agreement, Buyer shall deliver to Seller a written Deficiency Notice describing the asserted non-satisfaction or defect and the action required to cure. Seller shall have a period of 120 days after receipt of the Deficiency Notice (the "Cure Period") to cure such non-satisfaction or defect; provided, that if such defect is not reasonably capable of cure within the Cure Period but Seller commences cure during the Cure Period and diligently and continuously pursues cure, the Cure Period shall be extended for additional time to permit completion of the cure.
- iii. Return of Purchase Price. If, after the expiration of the Cure Period (as it may be extended), any Condition Precedent remains unsatisfied and is not waived by Buyer, then Buyer may terminate this Agreement by written notice to Seller and within 30 Business Days after such termination Seller shall return to Buyer the Purchase Price.
- iv. No Waiver. The early provisions of the Purchase Price under this Section shall not constitute a waiver by Buyer of any right, remedy, or Condition Precedent under this Agreement.

12. EASEMENT FOR WATER WELLS AND WATER LINE: Seller shall maintain its title and rights related to easements existing as of the date of Closing for easements related to the water rights conveyed herein. As of the date of this Agreement, the Parties understand the precise location of these easements has not been determined but will be determined through the design process conducted by the City or its agents. The Buyer acknowledges that the City shall maintain title to these easements upon of this Purchase and Sale Agreement and after Closing and this is essential for the City's ongoing maintenance of the water lines.

13. RISK OF LOSS; CONDITION OF WATER RIGHT. Until the Closing Date, the Water Right remains with Seller, who bears any risk of loss or impairment and shall maintain any required use-reports and pay any DWR fees. If any event occurs that materially impairs the value or validity of the Water Right between Effective Date and Closing, Seller shall give prompt written notice to the Buyer and the Buyer may elect to terminate this Agreement or adjust the Purchase Price downward to reflect such impairment.

14. INDEMNITIES. To the extent allowed by law, Seller shall indemnify and hold harmless the Buyer and its officers, agents, and employees from and against any and all claims, losses, liabilities, costs or expenses NOT including reasonable attorneys' fees arising from (a) breach of any representation or warranty; (b) pre-Closing non-compliance with the

Water Right; or (c) undisclosed liens or obligations on the Water Right. The Buyer shall hold harmless Seller from and against any and all claims, losses, liabilities, costs or expenses arising from the Buyer's post-Closing use of the Water Right if such use is outside the scope permitted by DWR or in violation of the change Order, but only to the extent such liability is caused by the Buyer's misuse.

15. REGULATORY COMPLIANCE; CONDITIONS OF USE.

- a. The Parties acknowledge that Seller will operate the wells drawing water pursuant to the Water Rights as specified by other agreements between the Parties, and Seller will be responsible for all regulatory compliance relating to the Water Right, including annual water-use reports to DWR, installation/maintenance of flow meters, adherence to conditional orders of DWR, and acceptance of any monitoring or conservation measures imposed.
- b. Neither Party guarantees that DWR will approve any requested change in use or place of diversion; and the Parties acknowledge that any such approval may be conditioned on conservation, mitigation, monitoring, or other measures.
- c. If DWR imposes conditions that materially alter the economics of the deal, (e.g., large required metering or pipeline), the Parties agree to negotiate in good faith an adjustment to Purchase Price or termination of the Agreement.
- d. The Water Right may not be abandoned for non-use; Seller must ensure beneficial use continues to the closing (or due and sufficient cause exists).

16. NOT SUBJECT TO KWTA. The Parties have determined, based on current information, that the transaction is **not** a "water transfer" subject to the KWTA because the annual quantity is less than 2,000 acre-feet per year and the place of use change is less than 35 miles and therefore the extra procedural requirements of the KWTA are not triggered. If the annual quantity or change-of-use/point-of-diversion is later determined by DWR or a reviewing body to require KWTA compliance, then either Party may (i) renegotiate this Agreement to account for such additional cost/time; or (ii) terminate this Agreement without penalty.

17. ASSIGNMENT OF DOCUMENTS AND RECORDS. Seller shall deliver to the Buyer all records and files in its possession relevant to the Water Right, including historical use reports, meter records, correspondence with DWR, and copies of change-application materials or orders. Seller also agrees to provide reasonable assistance and access to records for the Buyer's due diligence review.

18. CONFIDENTIALITY. The Parties agree that all non-public information exchanged between them relating to the Water Right, the purchase price, and related negotiations shall remain confidential and not be disclosed except (a) as required by law, (b) in connection with obtaining financing, or (c) with the written consent of the other Party.

19. 1031 LIKE KIND EXCHANGE. Seller and Buyer acknowledge that each party (Seller and Buyer) reserves the right that the transaction contemplated hereunder may be

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completed as a Tax Free Exchange of Like Kind Property pursuant to 1031 of the Internal Revenue Code of 1986 as amended. Seller and Buyer shall cooperate with one another in effectuating such exchange provided such cooperation shall not impose liability upon the other property, nor require payment of any cost of fees by the other party and such exchange shall not delay the closing. Furthermore, Buyer and Seller shall have the right to pay for or receive the property through an intermediary (1031).

20. MISCELLANEOUS.

- a. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Venue shall be proper only in the Sixteenth Judicial District Court in Ford County, Kansas.
- b. Notice. All notices required or permitted under this Agreement shall be in writing and shall be delivered to the Parties at the addresses listed above (or as later specified in writing) by mail.
- c. Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.
- d. Entire Agreement; Amendment. This Agreement contains the entire understanding of the Parties with respect to its subject matter, supersedes all prior negotiations and agreements, and may be amended only by a written instrument signed by both Parties.
- e. Survival. The representations, warranties, indemnities of Sections 12 and 13 shall survive the Closing for a period of one year or as otherwise permitted by Kansas law.
- f. Waiver. No waiver of any provision hereof shall be effective unless in writing signed by the party against whom the waiver is sought to be enforced.
- g. Severability. If any provision of this Agreement is found invalid, illegal or unenforceable under applicable law, the remaining provisions shall remain in full force and effect.
- h. Counterparts, Electronic Signatures. This Agreement may be executed in counterparts and by electronic (e-signature) means, each of which shall be deemed an original and all of which together shall constitute one instrument.

December 22, 2025

ACKNOWLEDGEMENT: The Parties have hereunto set their signatures on this Agreement on the day and date written below.

BUYER:

CITY OF DODGE CITY:

Jeffery Reinert, Mayor

ATTEST:

Connie Marquez, City Clerk

EXHIBIT A
(description of water file 24987 and 12709)

The water rights being contemplated for purchase include:

- a. Water File No. **24987**;
- b. Priority Date: 11/26/1975;
- c. Authorized Annual Quantity: 260 acre-feet;
- d. Point of Diversion: 3960 feet north & 1323 feet west of the SE of S23-T27S-R25W;
- e. Place(s) of Use:
 - i. S23-T27S-R25W SE NE – 32.0 acres
 - ii. S23-T27S-R25W SW NE – 33.0 acres
 - iii. S23-T27S-R25W NE NE – 32.5 acres
 - iv. S23-T27S-R25W NW NE – 33.0 acres
 - v. S23-T27S-R25W SE SE – 40.0 acres
 - vi. S23-T27S-R25W SW SE – 40.0 acres
 - vii. S23-T27S-R25W NE SE – 37.0 acres
 - viii. S23-T27S-R25W NW SE – 40.0 acres
- f. Legal Description of Land Appurtenant: The Northwest Quarter (NE/4) of Section Twenty-three (23), Township Twenty-seven (27) South, Range Twenty-five (25) West of the 6th P.M., Ford County, Kansas. And Southeast Quarter (SE/4) of Section Twenty-three (23), Township Twenty-seven (27) South, Range Twenty-five (25) West of the 6th P.M., Ford County, Kansas.

And

- a. Water File No. **12709**;
- b. Priority Date: 02/08/1967;
- c. Authorized Annual Quantity: 314 acre-feet;
- d. Point of Diversion: 2661 feet north & 1293 feet west of the SE of S23-T27S-R25W
- e. Place(s) of Use:
 - i. S23-T27S-R25W SE NE – 32.0 acres;
 - ii. S23-T27S-R25W SW NE – 33.0 acres
 - iii. S23-T27S-R25W NE NE – 32.5 acres
 - iv. S23-T27S-R25W NW NE – 33.0 acres
 - v. S23-T27S-R25W SE SE – 40.0 acres
 - vi. S23-T27S-R25W SW SE – 40.0 acres
 - vii. S23-T27S-R25W NE SE – 37.0 acres
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- f. Legal Description of Land Appurtenant: The Northwest Quarter (NE/4) of Section Twenty-three (23), Township Twenty-seven (27) South, Range Twenty-five (25) West of the 6th P.M., Ford County, Kansas. And Southeast Quarter (SE/4) of Section Twenty-three (23), Township Twenty-seven (27) South, Range Twenty-five (25) West of the 6th P.M., Ford County, Kansas.