

**CITY COMMISSION MEETING
Winfield, Kansas**

DATE: Monday, January 07, 2019
TIME: 5:30 p.m.
PLACE: City Commission – Community Council Room – First Floor – City Building

AGENDA

CALL TO ORDERMayor Gregory N. Thompson
ROLL CALL.....Deputy City Clerk, Carina Anderson
MINUTES OF SPECIAL CALLED MEETING.....Monday, December 17, 2018
MINUTES OF PRECEDING MEETING.....Monday, December 17, 2018

OATHS OF OFFICE

- Nomination and election of Mayor
- Nomination and election of Presiding Officer

BUSINESS FROM THE FLOOR

- Citizens to be heard

NEW BUSINESS

Ordinances & Resolutions

OTHER BUSINESS

- Consider a Prepay Participation Agreement with KMG/Minnesota Municipal Gas Association.
- Consider Refuse Truck Quote

ADJOURNMENT

- Special Meeting Thursday January 10, 2019 at 4:00 p.m.
- Next regular work session Thursday January 17, 2019 at 4:00 p.m.
- Next regular meeting Tuesday, January 22, 2019.

CITY COMMISSION MEETING MINUTES
Winfield, Kansas
December 17, 2018

The Board of City Commissioners met in special session, Monday, December 17, 2018 at 1:00 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Gregory N. Thompson presiding. Commissioners Ronald E. Hutto and Phillip R. Jarvis were also present. Also in attendance were Brenda Peters, Interim City Manager; and Carina Anderson, Deputy City Clerk.

Commissioner Jarvis made a motion to move into Executive Session to discuss matters deemed privileged in the attorney-client relationship pursuant to K.S.A. 75-4319. The open meeting will resume at 12:30 p.m. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

The special session resumed at 12:30 p.m.

Commissioner Jarvis made a motion to move into Executive Session to discuss matters deemed privileged in the attorney-client relationship pursuant to K.S.A. 75-4319. The open meeting will resume at 12:35 p.m. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

The special session resumed at 12:35 p.m.

Commissioner Hutto made a motion to adjourn. The motion was seconded by Commissioner Jarvis. With all Commissioners voting aye, motion carried. Meeting adjourned at 12:36 p.m.

Signed and sealed this 4th day of January 2019.

Signed and approved this 7th day of January 2019.

Carina Anderson, Deputy City Clerk

Gregory N. Thompson, Mayor

CITY COMMISSION MEETING MINUTES
Winfield, Kansas
December 17, 2018

The Board of City Commissioners met in regular session, Monday, December 17, 2018 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Gregory N. Thompson presiding. Commissioners Ronald E. Hutto and Phillip R. Jarvis were also present. Also in attendance were Brenda Peters, Interim City Manager; Carina Anderson, Deputy City Clerk; and William E. Muret, City Attorney. Other staff members present were Gary Mangus, Assistant to the City Manager; and Patrick Steward, Director of Public Improvements.

Commissioner Jarvis moved that the minutes of the December 3, 2018 meeting be approved. Commissioner Hutto seconded the motion. With all Commissioners voting aye, motion carried.

NEW BUSINESS

Bill No. 18111 – A Resolution – Authorizing and directing the City Manager of the City of Winfield, Kansas to execute a lease agreement between the City of Winfield and Winfield Isle of Lights, Inc. regarding the lease of the Island Park Storage Facility. Upon motion by Commissioner Hutto, seconded by Commissioner Jarvis all Commissioners voting aye, Bill No. 18111 was adopted and numbered Resolution No. 9018.

Bill No. 18112 – A Resolution – Declaring the entire boundary of the City of Winfield, Kansas. Upon motion by Commissioner Jarvis, seconded by Commissioner Hutto, all Commissioners voting aye, Bill No. 18112 was adopted and numbered Resolution No. 9118.

OTHER BUSINESS

-Consider 2019 CMB License Applications – Deputy City Clerk Anderson presented the following list of applicants for CMB licenses for 2019. Anderson asks the Commission to approve all applications.

Petro Stop – Babi & Co.	2124 E 9 th Ave.
Casey's General Store	219 W. 9 th Ave.
Dillons	2310 Main St.
One Stop LLC	221 E. 9 th Ave.
Food Mart	1500 Main St.
Walmart Store #369	2202 Pike Rd.
Boss Hoggs Bar BQ	314 W. 8 th Ave
New China Wok Buffet	1620 Main St.
Quail Ridge Golf Course	3805 Quail Ridge Dr.
Pizza Hut	1902 Main St.

Commissioner Hutto made a motion that the CMB license applications for 2019 CMB be approved as presented. Motion was seconded by Commissioner Jarvis. With all Commissioners voting aye, motion carried.

Interim City Manager Peters presented an invoice from Swindoll, Janzen, Hawk & Loyd, auditors, for a total of \$28,500 to finish paying them for 2017 audit. Commissioner Jarvis made a motion to approve the payment of the invoice. Motion was seconded by Commissioner Hutto. With all Commissioners voting aye, motion carried.

ADJOURNMENT

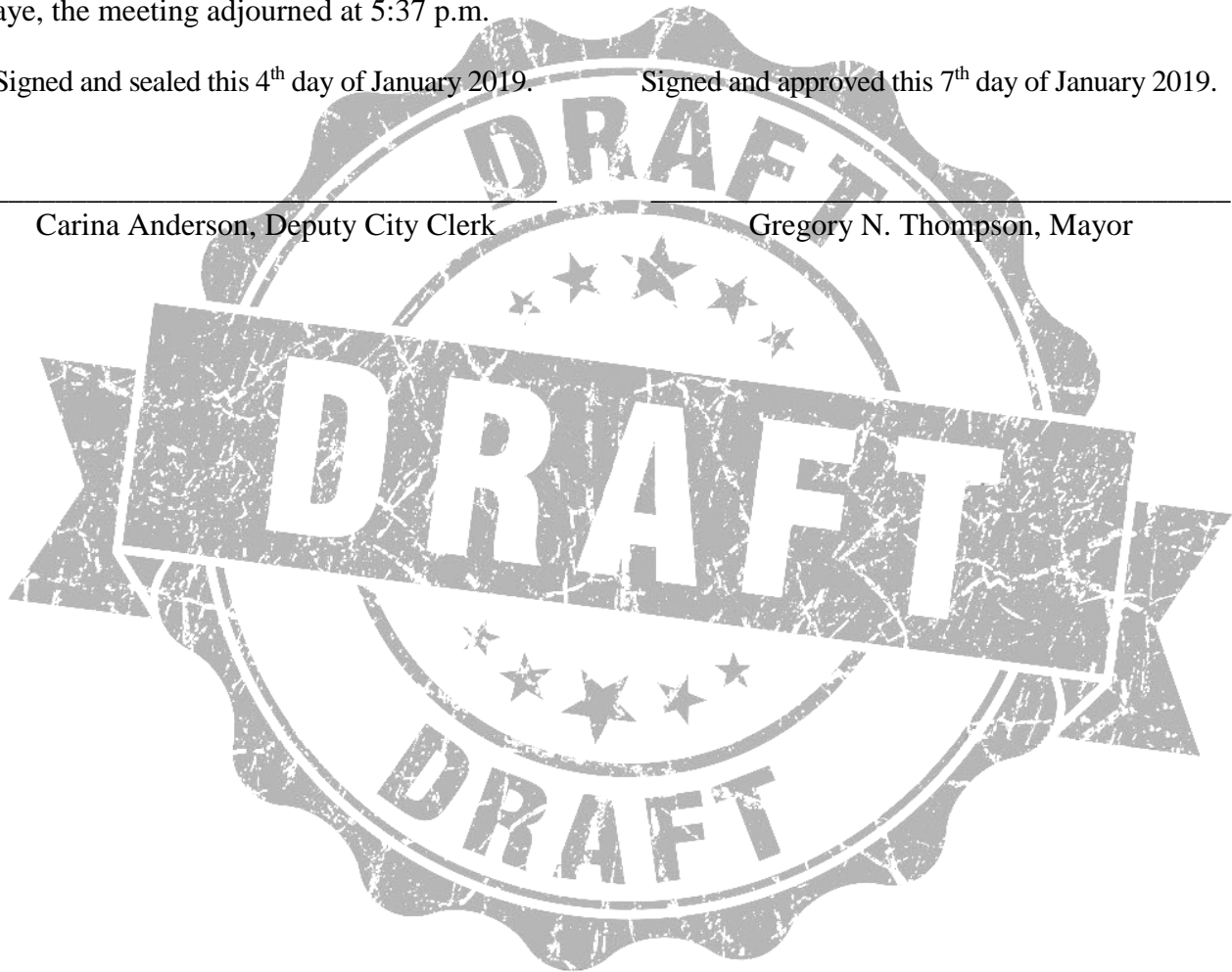
Upon motion by Commissioner Hutto, seconded by Commissioner Jarvis, all Commissioners voting aye, the meeting adjourned at 5:37 p.m.

Signed and sealed this 4th day of January 2019.

Signed and approved this 7th day of January 2019.

Carina Anderson, Deputy City Clerk

Gregory N. Thompson, Mayor





Request for Commission Action

Date: January 2, 2019

Requestor: Gus Collins, Director of Utilities

Action Requested: Consider a new agreement with KMGA/Minnesota Municipal Gas Association. Both agencies are venturing into a Prepay Participation Agreement (attached). At the November 13th work session, I did provide a brief review of this proposed opportunity. I provided an option for the City to have a reduction in our gas pricing through a prepay option. I indicated at that time that it was an addendum to our existing KMGA agreement, however, the legal team of KMGA is indicating that a new agreement must be approved. Our legal team (City Attorney and Washington D.C. Attorney) are reviewing. The D.C. Attorney has some minor comments that we are discussing with KMGA staff.

Analysis: After further review and discussion there has been an increase of interest in the entire membership of KMGA to partner with the Minnesota Municipal Gas Association on this endeavor. Prepay option guarantees we will have a discounted or reduced price for the acquisition of gas on a monthly basis. The discounts at this time have not yet been determined, however they have ranged from 25 cents to 50 cents below market index pricing. Recently, another agency, in Kentucky negotiated a reduction of 36 cents per MMBtu discount for a five-year period. As a reminder, the contract is 30 years. The discount, or the review of the discount will be re-evaluated on a five to seven-year basis. Thus, if the minimum discount is not obtained or offered after that five-year period then the City has the right to opt out of the agreement.

Fiscal Impact: At this time there is no cost to the city. We are eligible by virtue of our membership to the KMGA, so no additional cost. Savings will be realized in the purchase of natural gas. (An estimate of savings was \$60k/yr., based on a 40-cent reduction) We do not have any closing cost or start up fees. City staff recommends approval of this agreement. It is not a guarantee; a minimum threshold has to be met. Since the City of Winfield is the largest member in terms of Volume for the acquisition of gas then this will have a significant impact.

Attachments: Proposed agreement

Note: Approving this agreement does not guarantee the savings. A minimum number of the membership must approve. Staff recommends a motion to approve, contingent on final approval from legal counsel.

GILMORE & BELL, P.C.
12/17/2018

**NATURAL GAS PREPAY
PARTICIPATION AGREEMENT**

This Agreement entered into this ____ day of _____, by and between the Kansas Municipal Gas Agency ("KMGA") and the City of [Name of City], Kansas (the "City):

WHEREAS, pursuant to an interlocal cooperation agreement, certain Kansas municipalities have joined together under the provisions of K.S.A. 12-2901 *et seq.*, to organize and create KMGA; and

WHEREAS, the City owns and operates a municipal natural gas, electric or other municipal utility system that uses natural gas and is a member of KMGA pursuant to the provisions of the interlocal cooperation agreement and the KMGA Bylaws; and

WHEREAS, KMGA intends to contract with the Minnesota Municipal Gas Agency, a public nonprofit corporation or public instrumentality ("MMGA"), or its successor or assigns, under a project to acquire long-term supplies of Natural Gas from a gas supplier, pursuant to a Natural Gas Supply Agreement (the "Gas Supply Agreement"), to meet a portion of the Natural Gas supply requirements of KMGA's members that elect to participate (collectively, the "Project Participants") through a gas prepayment project offered by MMGA (the "Project"); and

WHEREAS, KMGA will act on behalf of the Project Participants to acquire Gas and provide other management services related to the Project; and

WHEREAS, the City desires to participate in the Project and receive the economic benefits set forth in this Agreement; and

WHEREAS, K.S.A. 12-825j authorizes the City to enter into contracts with any person, firm, corporation or other municipality for the acquisition of Natural Gas upon such terms as may be deemed necessary and reasonable by the governing body of the City; provided such contracts shall not exceed a period of forty years and shall not be payable by the levy of any tax; and

WHEREAS, this Agreement is intended to enable KMGA to pass through the benefits and obligations of KMGA under the Gas Supply Agreement to the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

DEFINITIONS

"Agreement" shall mean this Natural Gas Prepay Participation Agreement by and between KMGA and the City.

"City" shall mean the City of [Name of City], Kansas.

"Commercially Reasonable" or "Commercially Reasonable Efforts" shall have the meaning set forth in the Gas Supply Agreement.

"Contract Price" shall have the meaning set forth in the Gas Supply Agreement.

"Delivery Period" means the period from and including the first Gas Day of [_____], 2019 to and including the last Gas Day of [_____], 2049, unless earlier terminated pursuant to *Article 5* of the Gas Supply Agreement.

"Delivery Points" shall mean the respective Primary Delivery Points or the Alternate Delivery Points as defined in *Exhibit A* to the Gas Supply Agreement applicable to the City.

"Gas" or "Natural Gas" shall mean any mixture of hydrocarbons or of hydrocarbons and noncombustible gases, in a gaseous state consisting essentially of methane, which meets the quality requirements of the pipeline industry standard.

"Gas Day" means a period of 24 consecutive hours beginning at 9:00 a.m. CPT on a calendar day and ending at 9:00 a.m. CPT on the next calendar day or such other period as determined under the Gas Supply Agreement. The date of the Gas Day shall be the date at its beginning.

"Gas Supply Agreement" shall mean the agreement between KMGA and MMGA for the long-term supply of Gas to be delivered to the Project Participants, which the parties agree to attach hereto as *Exhibit C*.

"KMGA" shall mean the Kansas Municipal Gas Agency.

"MMGA" means the governmental or quasi-governmental entity that has the authority to issue municipal revenue bonds with the interest thereon being exempt from federal taxation pursuant to 26 U.S.C. §103.

"Participation Agreements" shall mean this and other Agreements entered into by and between KMGA and Project Participants.

"Parties" or "Party" shall mean collectively or individually, the City and KMGA.

"Project" shall mean the KMGA Gas Prepay project.

"Project Gas" shall mean Gas supplies to the Project Participants pursuant to this Agreement.

"Project Participants" shall mean the cities participating in the Project.

"System" shall mean the Natural Gas and/or Electric utility systems of the City.

ARTICLE I

Gas Purchases and KMGA Services

1.1 During the Delivery Period, the City shall purchase the volumes of Gas as specified on *Exhibit B* from the Project that are made available to KMGA pursuant to the terms and conditions of the Gas Supply Agreement.

1.2 The Contract Price of Gas shall be established as set forth in the Gas Supply Agreement.

1.3 In the event the City's failure to take Gas is due to load loss on its system, upon reasonable notice, KMGGA shall first seek to transfer such gas volumes to other Project Participants. If no other Project Participants agree to such transfer, then KMGGA may request that MMGA use Commercially Reasonable Efforts to sell, or arrange for sale, such quantities pursuant to the provisions of the Gas Supply Agreement. The City shall be obligated to pay the Contract Price for such quantities, and any amounts received from the sale, less all directly incurred costs or expenses including a remarketing administrative charge will be credited to the City.

1.4 The Project Gas will be delivered, and title will pass to the City, at the Delivery Points.

1.5 KMGGA shall provide the City with services relating to the purchase and sale of Gas, nomination of gas supplies and any and all other operational transactions associated with the delivery of Project Gas to the City.

ARTICLE II

Term

2.1 This Agreement shall be effective from the date first herein written above and continue in full force and effect for a term ending on the later of (a) termination of the Gas Supply Agreement attached hereto as *Exhibit C*, or (b) the end of the Delivery Period and final billings; provided, however, the term will not exceed the limitations provided in K.S.A. 12-825j.

2.2 The Parties recognize that if KMGGA's right of early termination as provided for in Section 5.3 of the Gas Supply Agreement does not allow for partial termination by KMGGA whereby each Project Participant would have the option to terminate their share of gas volumes under the Gas Supply Agreement, KMGGA shall base the decision to terminate on a simple majority vote of the Project Participants.

ARTICLE III

Relationship to Other Contracts

3.1 Except for the identity of the Project Participants and the volumes of Gas set forth on *Exhibit B*, (and, as applicable, other information specific to each individual Project Participant), this Agreement is and shall remain identical to the Participation Agreements of the other Project Participants.

Commented [P1]: NOTE: We are working with MMGA to include an option for a partial termination (i.e., the ability to reduce our volumes) rather than an all or nothing approach that currently exists in the agreement with MMGA. If we are successful, we will modify this section to allow each City to decide if they want to continue with the agreement assuming the minimum discount is not reached.

ARTICLE IV

Gas Supply Agreement

4.1 KMGA will enter into the Gas Supply Agreement on behalf of the City and all the other Project Participants. The terms and provisions of the Gas Supply Agreement are incorporated herein by reference and are attached hereto as *Exhibit C*. It is the intent of KMGA and the City that the benefits and obligations accruing to KMGA in the Gas Supply Agreement will flow through to the City pursuant to this Agreement. Accordingly, in the event of a conflict between the terms of this Agreement and the Gas Supply Agreement, the Parties to this Agreement shall look to the terms of the Gas Supply Agreement to attempt to resolve such conflict.

ARTICLE V

Cost Responsibility

5.1 It is the Parties' intention that the City will be responsible for its allocable share of the (a) Project Gas tendered for delivery, (b) any other costs, taxes, penalties or charges incurred by KMGA under the Gas Supply Agreement, (c) KMGA Prepay Administrative Fee and other reasonable costs associated with its operation of the Project. City's obligation to pay for its allocable share of such costs shall be effective upon the start of the Delivery Period and continue until all amounts due hereunder are paid in full notwithstanding the occurrence of any event or the taking of any action permitted by this Agreement.

5.2 The KMGA Prepay Administrative Fee shall be (i) an amount established by KMGA Board of Directors from time to time based on KMGA's budget, plus (ii) where applicable, City's portion of KMGA's costs incurred that are related to the Project but were not included in KMGA's budget. City shall have the right to review and have input on the KMGA budget via the KMGA Board of Directors. The KMGA Prepay Administrative Fee shall not exceed the management fee assessed by KMGA on gas supplied to cities under the Gas Acquisition Management Project Participation Agreement.

ARTICLE VI

Billing and Payments

6.1 KMGA will bill the City for actual volumes of gas tendered for delivery in MMBtu, adjusted for fuel losses and taxes imposed on KMGA, for each calendar month on or before the 20th day of the following month.

6.2 KMGA will bill the City in advance the estimated cost for projected gas supply to be delivered in the second month following the current calendar month as referenced in *Section 6.1* of this Agreement. KMGA will provide a true-up on subsequent invoices of the estimated costs to the actual costs and volumes when that information is available.

6.3 The City will pay invoices within thirty (30) days from the date such bills are sent by KMGA. The City agrees to pay all invoices without deduction and may contest any invoice as provided in *Section 6.4*. Interest on any unpaid amount shall accrue from the date due until the date upon which payment is made at the lesser of one percent (1%) per month or the highest rate allowed by law. KMGA shall have the right to suspend delivery of all or part of the gas supply to the City if (a) KMGA has not received payment of an

invoice by the tenth (10th) day after invoice due date, or (b) if the City breaches any other term or condition of this Agreement. Suspension of delivery of gas shall be in addition to any and all other remedies available at law or in equity.

6.4 In the event the City desires to dispute all or any part of the amount billed by KMGA it shall nevertheless pay the full amount of the invoice when due and give notification in writing within ninety (90) days from the date of the statements stating the specific grounds for the dispute and the amount in dispute. The City will not be entitled to any adjustment on account of any disputed invoice amounts which are not brought to the attention of KMGA by the City within the time and in the manner herein specified.

6.5 All amounts payable by the City under this Agreement shall be due whether or not future Gas deliveries are suspended, interrupted, interfered with, reduced, curtailed or terminated in whole or in part, and such payments shall not be subject to any reduction, whether by offset, counterclaim, recoupment or otherwise, and shall not be conditioned upon the performance or nonperformance of KMGA or any other person under this Agreement or any other agreement for any cause whatsoever.

ARTICLE VII

Information Regarding the Project

7.1 KMGA will make reasonable efforts to obtain any specific information on the Project requested by the City.

ARTICLE VIII

Liability and Indemnification

8.1 The City expressly agrees, to the fullest extent permitted by law, to indemnify, hold harmless and defend KMGA against any and all claims, liability, costs or expenses (including without limitation attorneys' fees and expenses) for loss, damage or injury to persons or property in any manner directly or indirectly connected with or growing out of the Gas Supply Agreement, the Project, and/or the transportation of Gas from the Delivery Point, unless such loss, damage or injury is the result of bad faith, gross negligence, or reckless or willful misconduct of KMGA or its employees acting within the course and scope of their employment; provided, however, the indemnification by the Project Participants shall be limited to each Project Participant's allocable share.

8.2 To the fullest extent permitted by law, neither Party shall be liable to the other for punitive, indirect, exemplary, consequential, or incidental damages arising in connection with this Agreement.

8.3 Nothing herein shall be construed as a waiver by either Party of the sovereign tort immunity granted to the Parties under the laws of the State.

ARTICLE IX

Default and Remedies

9.1 An occurrence of any of the following events or conditions shall constitute an "Event of Default":

(a) Failure of the City to make any payment when due under this Agreement (a "Payment Default"); or

(b) Assignment of this Agreement by City other than as permitted pursuant to Article Twelve or any other action or omission by City that would cause KMGGA to be in breach of any provision of the Gas Supply Agreement; or

(c) The failure of a Party to perform or abide by any other material obligation under this Agreement within 60 days of receipt of written notice of non-performance; provided, however, that if such default cannot be cured within such 60-day period, no Event of Default shall occur for so long as the non-performing Party is diligently pursuing a cure, and such non-performance is curable; or

(d) The commencement, with respect to a Party, by such Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditors' rights or a petition is presented or instituted for its winding-up or liquidation.

9.2 If a Party fails to perform or breaches any of its material obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity (except as limited by Section 9.3). The Parties acknowledge and agree that monetary damages may not be an adequate remedy at law for the failure of a Party to perform certain material obligations under this Agreement, and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

9.3 In response to any Event of Default by KMGGA, City shall not have the right to terminate this Agreement.

9.4 Notwithstanding any provision to the contrary contained in this Agreement, the Parties acknowledge and agree that KMGGA shall not be liable for monetary damages to City arising from or in connection with any reports, notices, certificates, documents, information or data of any kind or nature (whether or not prepared by or on behalf of KMGGA) provided to City pursuant to or in connection with this Agreement.

ARTICLE X

Dispute Resolution

10.1 If a dispute arises between the Parties, then the aggrieved Party may provide written notice thereof to the other Party, including a detailed description of the subject matter of the dispute.

10.2 Representatives of the Parties shall in good faith attempt to resolve such dispute by informal negotiations within ten (10) Business Days from the date of receipt of a dispute notice under Section 10.1.

10.3 If the dispute is not resolved within ten (10) Business Days following receipt of the dispute notice or such later date as the Parties may mutually agree, then each Party shall promptly designate its most senior executive responsible for the subject matter of the dispute who shall have authority to resolve the dispute. The senior executives shall obtain such information as may be

necessary to inform themselves of the substance and particulars of the dispute and shall meet within twenty (20) Business Days, at a time and place mutually acceptable to the senior executives.

10.4 If the senior executives are unable to resolve the dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the dispute shall be resolved solely and exclusively by binding arbitration, using the following procedures (absent agreement of the Parties to different procedures).

(a) The arbitration shall be conducted before a panel of three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the "Demand"), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief. The Demand shall be accompanied by all relevant supporting documents.

(b) Unless the dispute uniquely affects just one Participant, each other Participant that is affected by the dispute shall, for purposes of a particular arbitration, declare which Party it supports. In applying the provisions of this Section 10.4, each reference to a "Party" will be deemed to include all aligned Participants, and the aligned parties shall act in a collective manner to exercise their rights and fulfill their obligations hereunder. A Participant that elects not to participate will nonetheless be bound by the outcome of the arbitration.

(c) Arbitration shall be held in Johnson County, Kansas. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq. Notwithstanding references herein to use of the AAA Commercial Arbitration Rules and possible AAA selection of arbitrators, it is not the Parties' intention to require use of AAA or any other organization to administer any arbitration.

(d) The Party asserting a claim for relief and the Party opposing such relief shall each select one arbitrator within ten (10) days of the receipt of the Demand, or if such Party fails to make such selection within ten (10) days from the receipt of the Demand, the AAA shall make such appointment upon the written request of the other Party. The two arbitrators thus appointed shall select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators fail to agree on a third arbitrator within thirty (30) days of the selection of the second arbitrator, the AAA shall make such appointment.

(e) The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy regarding any claims, counterclaims, issues, or accountings presented to the arbitration panel. The arbitration panel shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(f) This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(g) Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to (1) consider or award any form of damages barred by this Agreement, or any other multiple or enhanced damages, whether under statutory or common law, or (2) require any modifications to this Agreement.

(h) Each Party understands that it will not be able to bring a lawsuit concerning the affected dispute, except as necessary to enforce this Section 10.4 or an arbitration award.

ARTICLE XI

Covenants, Representations and Warranties

11.1 KMGA's Representations. KMGA hereby makes the following representations, warranties and covenants to City as of the Effective Date and through the end of the Term:

(a) KMGA is a governmental entity duly organized pursuant to an interlocal cooperation agreement, validly existing and in good standing under the laws of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by KMGA of this Agreement have been duly authorized by all necessary action.

(c) This Agreement constitutes the legal, valid and binding obligation of KMGA, enforceable in accordance with its terms.

(d) There is no pending, or to the knowledge of KMGA, threatened action or proceeding affecting KMGA which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, KMGA's sole continuing covenant with respect to this Section 11.1(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.

11.2 City's Representations. City hereby makes the following representations, warranties and covenants to KMGA as of the Effective Date and through the end of the Term:

(a) City is a municipal corporation of the State, and has the legal power to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by City of this Agreement have been duly authorized by all necessary action.

(c) This Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.

(d) There is no pending, or to the knowledge of City, threatened action or proceeding affecting City before any governmental authority which purports to affect the legality, validity or enforceability of this Agreement as in effect on the date hereof. Notwithstanding the foregoing, City's sole continuing covenant with respect to this Section 11.2(d) shall be to take all necessary and reasonable actions to defend the enforceability and validity of this Agreement and aggressively defend any lawsuit involving or related to this Agreement.

(e) City is and shall remain throughout the term of this Agreement a member of KMGA.

(f) City will establish, maintain and collect such rates, fees and charges for the distribution of Gas from its System so as to provide revenues at least sufficient to enable City to make all payments required to be made by it under this Agreement and any other agreements with respect to its System.

(g) The obligations of City to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its System and available System reserves. All payments made by City pursuant to this Agreement shall constitute operation and maintenance expenses of its System. The City shall not be obligated to levy any taxes for the purpose of paying any amount due under this Agreement. The City shall not issue any evidence of indebtedness with a lien on its System revenues that is prior to the payment of operating and maintenance expenses.

(h) The City shall provide such financial information and operating data as KMGa is required to obtain from City under the Gas Supply Agreement or any rules or regulations applicable to KMGa related to the Project.

ARTICLE XII

Miscellaneous

12.1 *Amendments and Waivers.*

(a) Except as expressly provided herein, this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties.

(b) No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of the Party thereafter to enforce each and every provision thereof.

12.2 *Assignment.* This Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the parties hereto. Neither party may assign its rights nor delegate its obligations under this Agreement without the prior written consent of the other party.

12.3 *Notices.* Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), or (c) above shall be addressed as follows, or to such other address as any Party may designate by written notice to the other Parties.

To KMGGA: Kansas Municipal Gas Agency
6300 West 95th Street
Overland Park, KS 66212-1431
Attention: General Manager

To the City:

Attention:

12.4 **Confidentiality.** The parties agree that they and each of their agents, employees, contractors and other parties acquiring information about the Project or the Project Gas prices, quantity or quality shall hold such information in confidence, except to the extent such information must be disclosed to a third party as required by law or to effect delivery of Gas. The Parties recognize that any confidentiality restrictions hereunder must be consistent with applicable Kansas laws on open records and open meetings

12.5 **Books and Records.** Each party shall have the right at all reasonable times to examine the books and records of the other party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to this Agreement.

12.6 **Governing Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

12.7 **Jury Trial.** EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

12.8 **Integration.** This Agreement contains the entire Agreement between the parties hereto, and no waiver, modification or other changes shall be effective unless in writing and executed by the parties.

12.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

12.10 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law; but if any provision of this Agreement shall be prohibited by or deemed invalid under any applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

KANSAS MUNICIPAL GAS AGENCY

By: _____
President

(SEAL)

Attest:

By: _____
Secretary

THE CITY OF [Name of City], KANSAS

By: _____
Mayor

(SEAL)

Attest:

By: _____
City Clerk

EXHIBIT A

DELIVERY POINTS

EXHIBIT B

GAS VOLUMES

EXHIBIT C

GAS SUPPLY AGREEMENT



Request for Commission Action

Date: 1/2/19

Requestor: Patrick Steward, Director of Public Improvements

Action Requested:

Commission agenda: Other Business

Consider a 25 Yard Rear Load Refuse Packer Body and Low Entry Cab/Chassis Quote.

Analysis:

The City solicited quotes from three Rear Load Packer Body manufacturers in May of 2018. At that time, the City received only one bid which was from Elliott Equipment. As you may recall, the commission approved the purchase of the refuse truck for the 2018 budget year at that time. According to the manufacturer, we anticipate taking possession of that truck in February of this year.

In the 2019 budget, within the vehicle replacement schedule, another one of the refuse trucks is scheduled to be replaced. In discussing with Elliott Equipment, they will honor the 2018 bid price previously submitted. Based on the previous lack of response from other vendors and the increasing cost of materials, staff would recommend awarding the purchase of another identical refuse truck to Elliott Equipment.

Fiscal Impact:

The quote provided was for \$244,176. The City budgeted \$230,000 in 2019 for the purchase. The difference will be made up on the trade-in value of the truck that is being replaced. They have not provided a firm trade-in value since it will have 9-12 months of additional use before the new truck arrives. But, we would anticipate it exceeding the \$14k difference.

Attachments: