



**Agenda**  
**Kirkwood City Council**  
**City Hall**  
**Council Chambers**  
**139 South Kirkwood Road**  
**Kirkwood, MO 63122**  
**Thursday, April 18, 2024, 7:00 p.m.**  
**Posted on April 12, 2024**  
**Revised & Posted on April 15, 2024**

**I. PLEDGE OF ALLEGIANCE**

**II. ROLL CALL**

**III. INTRODUCTIONS AND RECOGNITIONS - NONE**

**IV. PRESENTATIONS**

1. Arbor Day Proclamation

**V. PUBLIC HEARINGS - NONE**

**VI. PUBLIC COMMENTS – 3 MINUTE LIMIT PER PERSON**

The Public Comments portion of the meeting is an opportunity for the City Council to listen to comments from citizens. It is not a question and answer session and the City Council will not respond to comments or answer questions during this period. The Mayor may refer any matter brought up to the City Council to the Chief Administrative Officer or City Clerk if action is needed.

**VII. CONSENT AGENDA**

All items within the Consent Agenda will be enacted by one motion of the Council with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Agenda and placed on the Regular Agenda by request of a member of the City Council. The expenditures listed in the consent agenda are items already approved in the current city budget.

- a) Approval of the April 4, 2024 Council Meeting Minutes

**VIII. UNFINISHED BUSINESS**

1. Bill 11032, amending the Kirkwood Code of Ordinances, Chapter 14, Article VIII. Section 14-393 "Schedule C: No Parking Zones" by adding no parking on the north side of East Essex Avenue between Woodlawn Avenue and Longview Avenue

**IX. NEW BUSINESS**

1. Resolution 64-2024, accepting the bid of Joe Machens Ford Lincoln in the amount of \$51,191 (pursuant to State of Missouri Cooperative Contract) for the purchase of a 2024 Ford F250 Super Cab 4x4 Truck for the Street Department and authorizing and directing the Director of Procurement to issue a Purchase Order
2. Resolution 65-2024, accepting the bid of Viking-Cives Midwest in the amount of \$127,410 (pursuant to Sourcewell Cooperative Contract) for the purchase of a



2024 Ford F550 Dump Truck for the Street Department and authorizing and directing the Director of Procurement to issue a Purchase Order

3. Resolution 66-2024, accepting the bid of Truck Centers, Inc. in the amount of \$212,214 (pursuant to MoDOT Cooperative Contract) for the purchase of a 2024 Ford F750 Dump Truck for the Street Department and authorizing and directing the Director of Procurement to issue a Purchase Order
4. Resolution 67-2024, accepting the quote of Murphy Company in the amount of \$133,450 for JACE Security Replacements and HVAC System Upgrades for City Hall, the Police Department and the Parks maintenance building and authorizing and directing the Director of Procurement to issue a Purchase Order
5. Resolution 68-2024, authorizing and directing the Mayor to enter into a Master Power Purchase and Sale Agreement between the City of Kirkwood and Trafigura for Fall 2024 Energy and Capacity Transactions for the Electric Department
6. Resolution 69-2024, accepting the proposal of Trafigura in the amount of \$251,372 for the purchase of Fall Block Power for 2024 for the Electric Department and authorizing and directing the Director of Procurement to issue a Purchase Order

**X. CONSENT AGENDA ITEMS FOR DISCUSSION (IF ANY)**

**XI. CITY COUNCIL REPORTS**

**XII. CHIEF ADMINISTRATIVE OFFICER REPORTS**

1. Application for Liquor License from 7-Eleven Store #19507L, 639 West Woodbine Avenue, to sell Intoxicating Liquor in Original Package, Plus Sunday

**XIII. CITY ATTORNEY REPORTS**

**XIV. CITY CLERK REPORTS**

1. Report of Planning & Zoning Commission Meeting (if any)
2. Upcoming Public Hearings:

**May 2, 2024**

A request for a Special Use Permit for an Accessory Dwelling Unit at 740 North Taylor Avenue in a detached structure.

**May 16, 2024**

A request for a Zoning Text Amendment to (1) add hours of operation to the Use-Specific Standards for the Personal and Commercial Service use in the B-1 Zoning District, and (2) to allow for the extension of hours of operation through approval of a Special Use Permit in the Use-Specific Standards for the Personal and Commercial Service, Restaurant, and Retail Business Uses in the B-1 Zoning District.

**XV. MEETING ADJOURNMENT**

The next regular meeting of the Kirkwood City Council will take place at **7:00 p.m. on May 2, 2024.**



## **CONTINUED ITEMS**

NONE

## **TABLED ITEMS**

NONE

**Kirkwood City Council:** Mayor Tim Griffin, Council Members Maggie Duwe, Liz Gibbons, Nancy Luetzow, Bob Sears, Kara Wurtz and Mark Zimmer

**Contact Information:** For full City Council contact information visit [www.kirkwoodmo.org/council](http://www.kirkwoodmo.org/council). To contact the City Clerk call 314-822-5802. To contact the Chief Administrative Officer call 314-822-5803.

**Accommodation:** The City of Kirkwood is interested in effective communication for all persons. Persons requiring an accommodation to attend and participate in the meeting should contact the City Clerk at 314-822-5802 at least 48 hours before the meeting. With advance notice of seven calendar days, the City of Kirkwood will provide interpreter services at public meetings for languages other than English and for the hearing impaired. Upon request, the minutes from this meeting can be made available in an alternate format, such as CD by calling 314-822-5802.

# ***THE CONSENT AGENDA IS ATTACHED***

- a) Approval of the April 4, 2024 Council Meeting Minutes



WHERE COMMUNITY AND SPIRIT MEET\*

DRAFT

**City Council Meeting Minutes  
Kirkwood City Hall  
Thursday, April 4, 2024, 7:00 p.m.**

Pursuant to notice of meeting duly given by the Mayor, the City Council convened on Thursday, April 4, 2024, at 7:00 p.m. at Kirkwood City Hall, 139 South Kirkwood Road, Kirkwood, Missouri. Present were: Present were Mayor Griffin, Council Members Duwe, Gibbons, Luetzow, Sears, Wurtz, and Zimmer. Also in attendance were Chief Administrative Officer Russ Hawes, Assistant Chief Administrative Officer David Weidler, City Clerk Laurie Asche, Deputy City Clerk Bridget Waters, and City Attorney John Hessel.

**INTRODUCTIONS AND RECOGNITIONS**

NONE

**PRESENTATIONS**

NONE

**PUBLIC HEARINGS**

NONE

**PUBLIC COMMENTS**

1. Iggy Yuan, 1231 Wilton Ln.; made comments thanking Mayor Griffin and John Hessel all their years of service
2. Keith Schildroth, 40 St. Alice Ln.; made comments thanking John Hessel for his 34 years of service to the City of Florissant
3. Linda Fenton, 1861 N. Signal Hills; made comments thanking Mayor Griffin and John Hessel for all their years of service
4. Sandra James, 336 N. Harrison; made comments about Dog tags and leashes in Kirkwood, review workforce salaries, and solar energy
5. Roy Ross, 824 Elba Ln.; made comments about Tax Fraud
6. Ed Golterman, 542 Wooddell Ct.; made comments about Tax Exemptions
7. Tyler Wilson, 418 Mind Ln.; made comments thanking Council Members Wurtz, Sears, Duwe, Mayor Griffin, and John Hessel for their years of service
8. Jack Plummer, 847 Penny Ln.; made comments thanking Mayor Griffin and John Hessel for their years of service

**CONSENT AGENDA**

Motion was made by Council Member Zimmer and seconded by Council Member Wurtz to approve the Consent Agenda. The Consent Agenda was unanimously approved.

- a) Approval of the March 21, 2024 Council Meeting Minutes
- b) Resolution 46-2024, accepting the single source proposal of Placer Labs in the amount of \$23,100 for the purchase of Customized Visitor Data Software for the Planning and Development Services Department and



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- authorizing and directing the Director of Procurement to issue a Purchase Order
- c) Resolution 47-2024, accepting the single source proposal of Survalent Technology Corporation in the amount of \$17,835 for modifications to the SCADA Software for the Electric Department and authorizing and directing the Director of Procurement to issue a Purchase Order
- d) Resolution 48-2024, accepting the bid of Snap-On in the amount of \$15,283.56 (pursuant to Sourcwell Cooperative Contract) for the purchase of EEAC334B Polartech Dual AC Machine for the Fleet Department and authorizing and directing the Director of Procurement to issue a Purchase Order
- e) Resolution 49-2024, accepting the bid of St. Charles Harley-Davidson (Big St. Charles Motorsports, LLC) in the amount of \$28,652.63 for the purchase of a 2024 Harley Davidson Motorcycle for the Police Department and authorizing and directing the Director of Procurement to issue a Purchase Order
- f) Resolution 50-2024, accepting the bid of Enterprise Consulting Group in the amount of \$16,232.45 for CheckPoint Software Support for the MIS Department for an initial term of 12 months with the option to renew for up to four additional 12 month terms, pending budgetary approval, and authorizing and directing the Mayor to enter into a contract
- g) Resolution 51-2024, accepting the bid of Don Brown Chevrolet in the amount of \$38,134 (pursuant to State of Missouri Cooperative Contract) for the purchase of a 2024 Chevy Traverse AWD for the Facilities Department and authorizing and directing the Director of Procurement to issue a Purchase Order
- h) Resolution 52-2024, accepting the bid of Sentinel Emergency Solutions, LLC in the amount of \$58,626.05 for the purchase of Thermal Imaging Cameras for the Fire Department and authorizing and directing the Director of Procurement to issue a Purchase Order

**UNFINISHED BUSINESS**

Bill 11031, approving a Special Use Permit Amendment and Amended Site Plan for the expansion of a Nonconforming Use (Stained Glass Studio) for Emil Frei & Associates at 1017 West Adams Avenue subject to certain conditions was brought before the City Council.

Roll Call:

- Mayor Griffin "Yes"
- Council Member Zimmer "Yes"
- Council Member Duwe "Yes"
- Council Member Gibbons "Yes"
- Council Member Luetzow "Yes"
- Council Member Sears "Yes"
- Council Member Wurtz "Yes"



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The bill, having received majority approval of the Council, was adopted and became Ordinance 10857.

**NEW BUSINESS**

Bill 11032, amending the Kirkwood Code of Ordinances, Chapter 14, Article VIII. Section 14-393 "Schedule C: No Parking Zones" by adding no parking on the north side of East Essex Avenue between Woodlawn Avenue and Longview Avenue was brought before the City Council. Motion was made by Council Member Luetzow and seconded by Council Member Wurtz to accept the bill as read. A discussion took place.

The bill received first reading approval and was held over.

Resolution 53-2024, accepting the bid of T&R Electrical Supply Co, Inc. in the amount of \$139,110 for the purchase of Single Phase Pole Mount and Three Phase Pad Mount Dual Voltage Transformers for the Electric Department and authorizing and directing the Director of Procurement to issue a Purchase Order was brought before the City Council. Motion was made by Council Member Duwe and seconded by Council Member Luetzow to accept the Resolution as read.

Roll Call:

- Mayor Griffin "Yes"
- Council Member Zimmer "Yes"
- Council Member Duwe "Yes"
- Council Member Gibbons "Yes"
- Council Member Luetzow "Yes"
- Council Member Sears "Yes"
- Council Member Wurtz "Yes"

Resolution 54-2024, amending Resolution 19-2024 with Anixter, Inc. by increasing the Purchase Order amount by \$228,635 for a total amount of \$313,500 for the purchase of 35KV and 15KV ERP Cable for the Electric Department and authorizing and directing the Director of Procurement to issue an amended Purchase Order was brought before the City Council. Motion was made by Council Member Gibbons and seconded by Council Member Zimmer to accept the Resolution as read. A discussion took place.

Roll Call:

- Mayor Griffin "Yes"
- Council Member Zimmer "Yes"
- Council Member Duwe "Yes"
- Council Member Gibbons "Yes"
- Council Member Luetzow "Yes"
- Council Member Sears "Yes"



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Council Member Wurtz "Yes"

Resolution 55-2024, accepting the bid of Sweetens Concrete Services in the amount not to exceed of \$384,707 (which includes a contingency of \$63,191.80) for the 2024 Concrete Replacement Project for the Engineering Department and authorizing and directing the Mayor to enter into a contract was brought before the City Council. Motion was made by Council Member Luetzow and seconded by Council Member Gibbons to accept the Resolution as read. A discussion took place.

Roll Call:

Mayor Griffin	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Wurtz	"Yes"

Resolution 56-2024, accepting the bid of Spencer Contracting in the amount not to exceed of \$338,881 (which includes a contingency of \$44,201.65) for the 2024 Asphaltic Concrete Overlays for the Engineering Department and authorizing and directing the Mayor to enter into a contract was brought before the City Council. Motion was made by Council Member Zimmer and seconded by Council Member Luetzow to accept the Resolution as read. A discussion took place.

Roll Call:

Mayor Griffin	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Wurtz	"Yes"

Resolution 57-2024, accepting the bid of Corrective Asphalt Materials in the amount not to exceed of \$117,123 (which includes a contingency of \$4,000.96) for the 2024 Emulsified Maltene Based Asphalt Rejuvenator Project for the Engineering Department and authorizing and directing the Mayor to enter into a contract was brought before the City Council. Motion was made by Council Member Duwe and seconded by Council Member Luetzow to accept the Resolution as read.

Roll Call:

Mayor Griffin	"Yes"
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Council Member Zimmer	“Yes”
Council Member Duwe	“Yes”
Council Member Gibbons	“Yes”
Council Member Luetzow	“Yes”
Council Member Sears	“Yes”
Council Member Wurtz	“Yes”

Resolution 58-2024, authorizing the Mayor to enter into a Cooperation Agreement with the City of Glendale for use of the Kirkwood Facilities and Programs through March 31, 2027 was brought before the City Council. Motion was made by Council Member Wurtz and seconded by Council Member Zimmer to accept the Resolution as read. A discussion took place.

Roll Call:

Mayor Griffin	“Yes”
Council Member Zimmer	“Yes”
Council Member Duwe	“Yes”
Council Member Gibbons	“Yes”
Council Member Luetzow	“Yes”
Council Member Sears	“Yes”
Council Member Wurtz	“Yes”

Resolution 59-2024, accepting the proposal of Faith Group, LLC in the amount of \$56,200 for Commissioning Agent Services for the Community Center Renovations and authorizing and directing the Mayor to enter into a contract was brought before the City Council. Motion was made by Council Member Luetzow and seconded by Council Member Zimmer to accept the Resolution as read.

Roll Call:

Mayor Griffin	“Yes”
Council Member Zimmer	“Yes”
Council Member Duwe	“Yes”
Council Member Gibbons	“Yes”
Council Member Luetzow	“Yes”
Council Member Sears	“Yes”
Council Member Wurtz	“Yes”

Resolution 60-2024, accepting the proposal of Navigate Building Solutions in the amount of \$90,740 for upgrades to the Kirkwood Ice Rink and authorizing and directing the Mayor to enter into a contract was brought before the City Council. Motion was made by Council Member Zimmer and seconded by Council Member Luetzow to accept the Resolution as read.

Roll Call:



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Mayor Griffin	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Wurtz	"Yes"

Resolution 61-2024, amending the contract with Christner Architects by increasing the contract amount by \$3,705 for a total not to exceed amount of \$762,395 for Community Center Renovations and authorizing and directing the Mayor to enter into an amended contract was brought before the City Council. Motion was made by Council Member Zimmer and seconded by Council Member Duwe to accept the Resolution as read.

Roll Call:

Mayor Griffin	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Wurtz	"Yes"

Resolution 62-2024, amending the contract with United Construction ENT. Co. of St. Louis by accepting Change Order #2 and increasing the contract amount by \$93,192.50 (which includes an additional contingency of \$50,000) for a total not to exceed amount of \$8,125,431.50 for Community Center Renovations and authorizing and directing the Mayor to enter into an amended contract was brought before the City Council. Motion was made by Council Member Zimmer and seconded by Council Member Luetzow to accept the Resolution as read.

Roll Call:

Mayor Griffin	"Yes"
Council Member Zimmer	"Yes"
Council Member Duwe	"Yes"
Council Member Gibbons	"Yes"
Council Member Luetzow	"Yes"
Council Member Sears	"Yes"
Council Member Wurtz	"Yes"



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Resolution 63-2024, amending the City of Kirkwood’s Deferred Compensation Plan was brought before the City Council. Motion was made by Council Member Wurtz and seconded by Council Member Duwe to accept the Resolution as read.

Roll Call:

Mayor Griffin	“Yes”
Council Member Zimmer	“Yes”
Council Member Duwe	“Yes”
Council Member Gibbons	“Yes”
Council Member Luetzow	“Yes”
Council Member Sears	“Yes”
Council Member Wurtz	“Yes”

**CONSENT AGENDA ITEMS FOR DISCUSSION**

NONE

**CHIEF ADMINISTRATIVE OFFICER REPORTS**

Mr. Hawes had nothing to report.

**CITY ATTORNEY REPORTS**

Mr. Hessel had nothing to report.

**CITY CLERK REPORTS**

Ms. Asche read the report of the April 3, 2024 meeting of the Planning and Zoning Commission, the following action was taken:

1. By a vote of 7-0, the Commission recommended approval of Special Use Permit for an Accessory Dwelling Unit at 740 North Taylor Avenue in a detached structure. A public hearing before the City Council is requested.

**CITY COUNCIL REPORTS**

Mayor Griffin made remarks congratulating the new Council Members; Mark McLean, Gina Jaksetic, Paul Schaefer, Al Rheinnecker, and new Mayor Elect Liz Gibbons. Mayor Griffin also thanked City Attorney John Hessel and his years of service to the City of Kirkwood.

Council Member Gibbons inform the Council about the meeting with the Missouri Passenger Rail Action Committee. MoDot has contracted with advance media and redone the Missouri River Run website and are putting out social media ads.

Council Luetzow informed Council about the event planting a tree at Meramec College Campus at 9 am. The College is now designated as a Tree Campus.

The Council all made comments thanking John Hessel for years of service to Kirkwood



WHERE COMMUNITY AND SPIRIT MEET\*

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Mayor Griffin presented John Hessel with a plaque that will be hung outside the Council Chambers.

John Hessel thanked the Mayor and Council for the plaque and all the fond memories working for Kirkwood.

CAO Hawes thanked John Hessel for his years of service

City Clerk Asche also thanked John Hessel for his years of service.

### **ADJOURNMENT**

There being no further business to come before the Council, the formal meeting was adjourned at 8:20 p.m. The next regular meeting of the Kirkwood City Council will take place at 7:00 p.m. on April 18, 2024.

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Laurie Asche  
City Clerk

***Approved:***

BILL 11032

ORDINANCE

AN ORDINANCE AMENDING THE KIRKWOOD CODE OF ORDINANCES, CHAPTER 14, ARTICLE VIII. SECTION 14-393 "SCHEDULE C: NO PARKING ZONES" BY ADDING NO PARKING ON THE NORTH SIDE OF EAST ESSEX AVENUE BETWEEN WOODLAWN AVENUE AND LONGVIEW AVENUE.

WHEREAS, as part of the Longview Avenue Improvement Project, a sidewalk was installed on the south side of East Essex Avenue between Woodlawn Avenue and Longview Avenue, and

WHEREAS, it is recommended that in order to allow for safe passage of vehicles parking on the north side of East Essex Avenue should be restricted, and

WHEREAS, the Street Code Issues Team (SCIT) reviewed the request and recommends that the "no parking" be added on the north side of East Essex Avenue between Woodlawn Avenue and Longview Avenue.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Kirkwood Code of Ordinances, Chapter 14, Article VIII. Section 14-393 (c) is hereby amended by adding the following:

*East Essex Avenue (north side) between Woodlawn Avenue and Longview Avenue*

SECTION 2. The Street Department is hereby directed to install and maintain "No Parking Signs" in the above location.

SECTION 3. This Ordinance shall be in full force and effect after its passage and approval, as provided by law.

PASSED AND APPROVED THIS DAY OF.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

\_\_\_\_\_  
City Clerk  
1<sup>st</sup> Reading:  
2<sup>nd</sup> Reading:

# Legislation Request

## Ordinance

Place On The Agenda Of: 4/4/2024

Step #1:

Strategic Plan YES

Goal # & Title Quality of Life: Goal 3

Background To Issue:

As part of the Longview Improvement Project, a sidewalk was installed on the south side of East Essex Avenue between Woodlawn Avenue and Longview Avenue. Several meetings were held with the residents on East Essex Avenue to discuss details of the project. In order to allow for safe passage of vehicles, it is recommended to restrict parking on the north side of East Essex Avenue. Street Code Issues Team reviewed the request and recommends the change in the Ordinance.

Recommendations and Action Requested:

Amend the Kirkwood Code of Ordinances, Chapter 14, Article VIII, Traffic Schedules, Schedule C: No Parking Zones, by adding along the north side of East Essex Avenue between Woodlawn Avenue and Longview Avenue".

Alternatives Available:

Does this project have a public information component?  Yes  No

Cost: \$0.00

Account #: n/a

Project #: n/a

If YES, Budgeted Amount: \$0.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Richard Holesinger

Date: 3/25/2024

Authenticated:

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Select...

Purchasing Director's Comments:

BY: Select...

Date:

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date:

Authenticated:

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve  Disapprove

Chief Administrative Officer's Comments:

BY:



Date:

3/28/24

RESOLUTION 64-2024

A RESOLUTION ACCEPTING THE BID OF JOE MACHENS FORD LINCOLN IN THE AMOUNT OF \$51,191 (PURSUANT TO STATE OF MISSOURI COOPERATIVE CONTRACT) FOR THE PURCHASE OF A 2024 FORD F250 SUPER CAB 4X4 TRUCK FOR THE STREET DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City may purchase items and services that have been competitively bid and awarded by State of Missouri Cooperative Contract, and

WHEREAS, staff recommends that the City purchase a 2024 Ford F250 Super Cab 4x4 Truck for the Street Department from Joe Machens Ford Lincoln in the amount of \$51,191 under State of Missouri Cooperative Contract #CC240138008, and

WHEREAS, funds are available in Account #301-05-070-000-000-620050 (Rolling Stock).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of Joe Machens Ford Lincoln in the amount of \$51,191 for the purchase of a 2024 Ford F250 Super Cab 4x4 Truck for the Street Department under State of Missouri Cooperative Contract #CC240138008 is hereby accepted and approved.

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a Purchase Order to Joe Machens Ford Lincoln in the amount of \$51,191 for the purchase of a 2024 Ford F250 Super Cab 4x4 Truck for the Street Department under State of Missouri Cooperative Contract #CC240138008.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

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Mayor, City of Kirkwood

ATTEST:

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City Clerk



# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan YES

Goal # & Title Quality of Life: Goal 3

Background To Issue:

In the FY25 Budget, funds have been allocated for the replacement of truck 6106, a 2014 Ford F250 truck, that has exceeded the replacement criteria of 15 with a current score of 17.89. This truck is used on for daily operations for signing, striping, and pavement maintenance for the street department.

Recommendations and Action Requested:

It is recommended that City council approve the quote in the amount not to exceed \$51,191.00

Alternatives Available:

Does this project have a public information component?  Yes  No

Cost: \$51,191.00

Account #: 301-05-070-000-000-620050

Project #: N/A

If YES, Budgeted Amount: \$51,191.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Christopher Krueger

Date: 4/9/2024

Authenticated: Ckrueger

*You can attach up to 3 files along with this request.*



F250 Super Cab 4x4.pdf  
Adobe Acrobat Document  
150 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/9/2024

Authenticated: sfo

You can attach up to 3 files along with this request.



File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$51,191 in account 301-05-070-000-000-620050, Rolling Stock to approve the above as requested.

BY: Select...

Date: 4/9/2024

Authenticated: Jennifer Forgy

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-10-24

April 9, 2024

**To:** Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** 2024 Ford F250 Super Cab 4x4 Truck - 501220

The Street Department would like to replace their 2014 Ford F250 Truck, asset #6106, through a state contract for a 2024 Ford F250 Super Cab 4X4 Truck.

The City of Kirkwood may use cooperative contracts that are competitively bid. The State competitively bid this vehicle and Joe Machens Ford Lincoln was the lowest responsible and responsive bid. The State of Missouri contract number is CC240138008.

Attached is a request from Chris Krueger, Public Services Director, for a resolution authorizing a purchase order in the amount of \$51,191 to be issued to Joe Machens Ford Lincoln for the purchase of a 2024 Ford F250 Super Cab 4x4 truck for the Street Department.

Respectfully

A handwritten signature in black ink, appearing to read "Sara Foan-Oliver". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sara Foan-Oliver  
Procurement Director

RESOLUTION 65-2024

A RESOLUTION ACCEPTING THE BID OF VIKING-CIVES MIDWEST IN THE AMOUNT OF \$127,410 (PURSUANT TO SOURCEWELL COOPERATIVE CONTRACT) FOR THE PURCHASE OF A 2024 FORD F550 DUMP TRUCK FOR THE STREET DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City may purchase items and services that have been competitively bid and awarded by Sourcewell Cooperative Contract, and

WHEREAS, staff recommends that the City purchase a 2024 Ford F550 Dump Truck for the Street Department from Viking-Cives Midwest in the amount of \$127,410 under Sourcewell Cooperative Contract #062222-VCM, and

WHEREAS, funds are available in Account #301-05-070-000-000-620050 (Rolling Stock).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of Viking-Cives Midwest in the amount of \$127,410 for the purchase of a 2024 Ford F550 Dump Truck for the Street Department under Sourcewell Cooperative Contract #062222-VCM is hereby accepted and approved.

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a Purchase Order to Viking-Cives Midwest in the amount of \$127,410 for the purchase of a 2024 Ford F550 Dump Truck for the Street Department under Sourcewell Cooperative Contract #062222-VCM.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

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Mayor, City of Kirkwood

ATTEST:

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City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan YES

Goal # & Title Quality of Life: Goal 3

Background To Issue:

In the FY25 Budget, funds have been allocated for the replacement of truck 6143, a 2009 Ford F450 4x2 Dump truck, that has exceeded the replacement criteria of 15 with a current score of 22.83. This truck is used on for daily operations for hauling excavation spoils and materials, in addition to snow plowing, for the street department.

Recommendations and Action Requested:

It is recommended that City council approve the quote in the amount not to exceed \$127,410.

Alternatives Available:

Does this project have a public information component?  Yes  No

Cost: \$127,410.00

Account #: 301-05-070-000-000-620050

Project #: N/A

If YES, Budgeted Amount: \$127,410.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Christopher Krueger

Date: 4/9/2024

Authenticated: Ckrueger

You can attach up to 3 files along with this request.



VIKINGQUOTE\_Quote171547.p

df

Adobe Acrobat Document

66.3 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/9/2024

Authenticated: sfo

You can attach up to 3 files along with this request.



Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$127,410 in account 301-05-070-000-000-620050, Rolling Stock to approve the above as requested.

BY: Select...

Date: 4/9/2024

Authenticated: Jennifer Forgy

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Disapprove

Chief Administrative Officer's Comments:

BY:

Date:

4-10-24

April 9, 2024

**To:** Russell B. Hawes, Chief Administrative Officer


**For Your Consideration:** 2024 Ford F550 Dump Truck - 501221

The Street Department would like to replace their 2009 Ford F450 4x2 Dump Truck, asset #6143, through a state contract for a 2024 Ford F550 Dump Truck.

The City of Kirkwood may use cooperative contracts that are competitively bid. The State competitively bid this vehicle and Viking-Cives Midwest, Inc. was the lowest responsible and responsive bid. The Sourcewell contract number is 062222-VCM.

Attached is a request from Chris Krueger, Public Services Director, for a resolution authorizing a purchase order in the amount of \$127,410 to be issued to Viking-Cives Midwest for the purchase of a 2024 Ford F550 Dump Truck for the Street Department.

Respectfully

A handwritten signature in black ink, appearing to read "Sara Foan-Oliver". The signature is fluid and cursive, with the first name "Sara" being the most prominent part.

Sara Foan-Oliver  
Procurement Director

RESOLUTION 66-2024

A RESOLUTION ACCEPTING THE BID OF TRUCK CENTERS, INC. IN THE AMOUNT OF \$212,214 (PURSUANT TO MODOT COOPERATIVE CONTRACT) FOR THE PURCHASE OF A 2024 FORD F750 DUMP TRUCK FOR THE STREET DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City may purchase items and services that have been competitively bid and awarded by MoDOT Cooperative Contract, and

WHEREAS, staff recommends that the City purchase a 2024 Ford F750 Dump Truck for the Street Department from Truck Centers, Inc. in the amount of \$212,214 under MoDOT Cooperative Contract #60524CO0258, and

WHEREAS, funds are available in Account #301-05-070-000-000-620050 (Rolling Stock).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The bid of Truck Centers, Inc. in the amount of \$212,214 for the purchase of a 2024 Ford F750 Dump Truck for the Street Department under MoDOT Cooperative Contract #60524CO0258 is hereby accepted and approved.

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a Purchase Order to Truck Centers, Inc. in the amount of \$212,214 for the purchase of a 2024 Ford F750 Dump Truck for the Street Department under MoDOT Cooperative Contract #60524CO0258.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

---

Mayor, City of Kirkwood

ATTEST:

---

City Clerk



# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan YES Goal # & Title Quality of Life: Goal 3

Background To Issue:

In the FY25 Budget, funds have been allocated for the replacement of truck 6188, a 2008 Ford F750 Dump truck, that has exceeded the replacement criteria of 15 with a current score of 45.63. This truck is used on for daily operations for hauling excavation spoils and materials, in addition to snow plowing, for the street department.

Recommendations and Action Requested:

It is recommended that City council approve the quote in the amount not to exceed \$212,214.

Alternatives Available:

Does this project have a public information component?  Yes  No

Cost: \$212,214.00 Account #: 301-05-070-000-000-620050 Project #: N/A

If YES, Budgeted Amount: \$212,214.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments: Budgeted: YES

BY: Christopher Krueger Date: 4/9/2024 Authenticated: Ckrueger

You can attach up to 3 files along with this request.



MY25 M2106 Plus SA  
Spec.docx  
Microsoft Word Document  
338 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/9/2024

Authenticated: sfo

*You can attach up to 3 files along with this request.*



Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$212,214 in account 301-05-070-000-000-620050, Rolling Stock to approve the above as requested.

BY: Select...

Date: 4/9/2024

Authenticated: Jennifer Forgy

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-10-24

April 9, 2024

To: Russell B. Hawes, Chief Administrative Officer

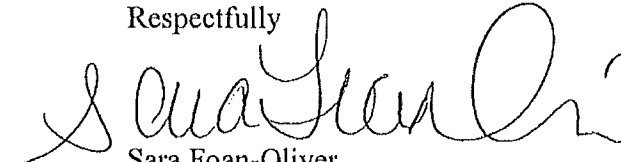
**For Your Consideration:** 2024 Ford F750 Dump Truck - 501222

The Street Department would like to replace their 208 Ford F750 Dump Truck, asset #6188, through a state contract for a 2024 Ford F750 Dump Truck.

The City of Kirkwood may use cooperative contracts that are competitively bid. The State competitively bid this vehicle and Truck Centere, Inc. was the lowest responsible and responsive bid. The MoDOT contract number is 60524CO0258.

Attached is a request from Chris Krueger, Public Services Director, for a resolution authorizing a purchase order in the amount of \$212,214 to be issued to Truck Centers, Inc. for the purchase of a 2024 Ford F750 Dump Truck for the Street Department.

Respectfully

A handwritten signature in black ink, appearing to read "Sara Foan-Oliver". The signature is fluid and cursive, with the first name "Sara" being particularly prominent.

Sara Foan-Oliver  
Procurement Director

RESOLUTION 67-2024

A RESOLUTION ACCEPTING THE QUOTE OF MURPHY COMPANY IN THE AMOUNT OF \$133,450 FOR JACE SECURITY REPLACEMENTS AND HVAC SYSTEM UPGRADES FOR CITY HALL, THE POLICE DEPARTMENT AND THE PARKS MAINTENANCE BUILDING AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City of Kirkwood approved Resolution 35-2021 on April 1, 2021 for Security Equipment Services and Repairs with Murphy Company, and

WHEREAS, the City of Kirkwood also approved Resolution 46-2021 on May 6, 2021 for HVAC Services and Maintenance with Murphy Company, and

WHEREAS, the current JACE security systems and card access readers at City Hall, the Police Department, and Parks maintenance building were installed in 2010,

WHEREAS, due to old software, aging components, licensing and security improvements, it is recommended that all of the JACE security systems, card access readers and HVAC controls be updated, and

WHEREAS, the City of Kirkwood received a quote from Murphy Company for JACE Security Replacements and HVAC System Upgrades in the amount of \$133,450, and

WHEREAS, staff recommends that the City of Kirkwood accept the quote of Murphy Company for JACE Replacements and HVAC System Upgrades in the amount of \$133,450, and

WHEREAS, funds are available in Account #301-07-035-000-000-620040 (Machinery and Equipment).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Director of Procurement is hereby authorized and directed to issue a Purchase Order in the amount of \$133,450 to Murphy Company for JACE Security Replacements and HVAC System Upgrades for City Hall, the Police Department, and the Parks maintenance building.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

---

Mayor, City of Kirkwood

ATTEST:

---

City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan NO Goal # & Title

Background To Issue:

The current security JACEs and card access readers at City Hall, Police, and Parks maintenance were installed in 2010. Due to old software, aging components and licensing and security improvements, it is recommend that all four JACEs be updated. This update includes card access and HVAC controls.

Recommendations and Action Requested:

The City received a proposal from its current contractor, Murphy, in the amount of \$133,450.00.

Alternatives Available:

Does this project have a public information component?  Yes  No

Cost: \$133,450.00 Account #: 3010703500000620040 Project #:

If YES, Budgeted Amount: \$133,450.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

BY: Sara Foan-Oliver

Date: 4/8/2024

Authenticated: sfo

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/9/2024

Authenticated: sfo

You can attach up to 3 files along with this request.



Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$133,450 in account 301-07-035-000-000-620040, Machinery & Equipment to approve the above as requested.

BY: Select...

Date: 4/9/2024

Authenticated: Jennifer Forgy

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-10-24

April 9, 2024

**To:** Russell B. Hawes, Chief Administrative Officer

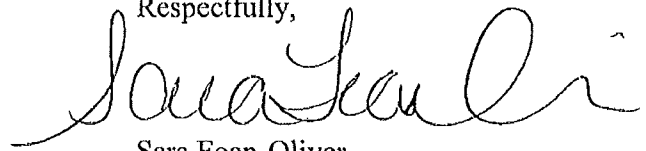
**For Your Consideration:** JACE Replacements and System Upgrades, Bid # 501215

The current security JACEs and card access readers at City Hall, Police and Parks maintenance were installed in 2010. Due to old software, aging components, licensing and security improvements, it is recommend that all four JACEs be updated. This update includes card access and HVAC controls.

A proposal was requested from Murphy Company, whom has been under contract with the City since May of 2021.

Attached is a request from Sara Foan-Oliver, Director of Procurement, for a resolution authorizing the City to issue a purchase order to Murphy Company in the amount of \$133,450.00 for JACE Replacements and System Upgrades.

Respectfully,

A handwritten signature in black ink, appearing to read "Sara Foan-Oliver". The signature is fluid and cursive, with a large initial "S" and "F".

Sara Foan-Oliver  
Procurement Director

RESOLUTION 68-2024

A RESOLUTION ACCEPTING THE SINGLE SOURCE PROPOSAL OF ARKANSAS ELECTRIC COOPERATIVE IN THE AMOUNT OF \$77,265 FOR THE PURCHASE OF 5,100 FEET OF 15KV CABLE FOR THE SUGAR CREEK SUBSTATION FOR THE ELECTRIC DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the Electric Department would like to purchase 5,100 feet of 15kV cable for the Sugar Creek Substation, and

WHEREAS, the City previously went out to bid for 15kV cable for the Sugar Creek Substation upgrade and found that distributors will only sell in 10,000 foot minimum quantities, with a lead time well into December 2024, and

WHEREAS, Arkansas Electric Cooperative submitted a proposal in the amount of \$77,265 for the purchase of 5,100 feet of 15kV cable, and

WHEREAS, Arkansas Electric Cooperative is a distributor of 15kV cable in lesser quantities than 10,000 foot requirement, therefore qualifying them as a single source provider, and

WHEREAS, funds are available in Account #501-20-250-254-000-620080 (Distribution System Improvements).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The single source proposal of Arkansas Electric Cooperative in the amount of \$77,265 for the purchase of 5,100 feet of 15kV cable for the Sugar Creek Substation for the Electric Department is hereby accepted and approved.

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a purchase order to Arkansas Electric Cooperative in the amount of \$77,265 for the purchase of 5,100 feet of 15kV cable for the Sugar Creek Substation for the Electric Department.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

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



# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan YES

Goal # & Title Goal 1, Objective 1D - Monitor infrastructure to ensure accomm...

Background To Issue:

Kirkwood Electric made contact with the organization that is comprised of the cooperative utilities and obtained a quote for the small quantity of 15kv cable at a favorable price and lead time. The Arkansas Electric Cooperatives are associate members of the Missouri Public Utilities Alliance, have supplied transformers to Kirkwood Electric in the past, and utilize the same cable specification as Kirkwood Electric. Kirkwood Electric is interested in obtaining the 15kv cable from the cooperative utilities.

Recommendations and Action Requested:

Approval of a resolution authorizing the Director of Procurement to enter into an agreement with the Arkansas Electric Cooperatives in the amount of \$77,265 for underground cable for the Sugar Creek Substation modernization project. This will be a single source as they are the only ones who will sell in the smaller amount we need with a lead time of summer 2024.

Alternatives Available:

The cable is expected to arrive July 2024. We'll have what we need for the Sugar Creek Substation project that's scheduled to be worked in the fall of 2024.

Does this project have a public information component?  Yes  No

Cost: \$77,265.00

Account #: 501-20-254-000-620080

Project #:

If YES, Budgeted Amount: \$77,265.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

The department recommends approval of the resolution. Bond funds are available for the purchase.

BY: Mark Petty


Date: 4/10/2024

Authenticated:

*You can attach up to 3 files along with this request.*

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/11/2024

Authenticated: sfi

*You can attach up to 3 files along with this request.*



202404110944.pdf  
Adobe Acrobat Document  
258 KB



202404110936.pdf  
Adobe Acrobat Document  
37.2 KB

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Budgetary Approval

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$77,265 in account 501-20-250-254-000-620080, Distribution System Improvements to approve the above as requested.

BY: Select...

Date: 4/11/2024

Authenticated: Jennifer Forgy

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-11-24

April 11, 2024

To: Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** 15kV Cable for Sugar Creek Substation - 501224

The Electric Department would like to purchase a specific amount (5100 ft.) of 15kv Cable for the Sugar Creek Substation. The City previously went out to bid for this cable for the Sugar Creek Substation upgrade. The Procurement Department found that distributors will only sell in 10,000 ft. quantities with a lead time well into December of 2024.

Mark Petty, Electric Director, found, The Arkansas Electric Cooperative, associate members of the Missouri Public Utilities Alliance, that has offered to provide this cable at a competitive price of \$77,265 with a lead time of July, 2024. This would qualify as a single source as there are no other distributors that will sell less than 10,000ft or with a lead time of summer 2024.

Attached is a request from Mark Petty, Electric Director, for a resolution authorizing a purchase order in the amount of \$77,265 to be issued to Arkansas Electric Cooperative for the purchase of 5100 ft. of 15kV cable for the Sugar Creek Substation modernization project.

Respectfully

A handwritten signature in black ink, appearing to read "Sara Foan-Oliver". The signature is fluid and cursive, written over a light blue horizontal line.

Sara Foan-Oliver  
Procurement Director

City of Kirkwood  
Single Source Purchasing Request

The Purchasing Ordinance (Article IV) for the City of Kirkwood requires that purchases of all supplies and contractual services exceeding \$1,500 be purchased using a competitive bidding process, and contract is awarded to the lowest responsible bidder after solicitation of between 3 and 5 responsible prospective suppliers depending on dollar threshold.

The requirement for competitive bids or proposals may be waived when the Director of Purchasing has determined, in writing, that there is only a single feasible source for the supplies.

This form is used to request and document requests for sourcing of supplies or contractual services that a requisitioner (person requesting the goods or services) believes must be single sourced as defined by the Purchasing ordinance.

The Requisitioner should complete the attached form and submit to the Director of Purchasing no later than 90 days prior to the date the item or service will be needed to allow adequate time for research, approvals by the Director of Purchasing and the CAO if applicable, sourcing if needed, and preparation and execution of the appropriate contracts and purchase orders.

**Memorandum**

To: Sara Foan Oliver, Dir of Procurement From: Mark Petty  
Date: 4 / 11 / 24 Subject: 15 kV Cable

Requisitioner Information

1. Supply or Contractual Service to be sourced: 15 kV Cable
2. Requisitioner name and department that uses item or service: Mark Petty, Electric
3. Has this item or service been used previously in the City of Kirkwood?  
 Yes  No  Other comment Kirkwood Electric 15kV cable needs for a new substation project. The new substation is scheduled to begin construction in the Fall of 2024 and begin commercial operation in the summer of 2025. Previous solicitations to obtain this cable have resulted in responses that include a minimum order amount of 10,000 ft. This is in excess the amount needed for this project. In addition, the lead times associated with previous solicitations for this cable are July 2024 or later and this would jeopardize the utility's ability to have adequate capacity for summertime energy demands. Kirkwood Electric has reached out to the organization that comoprises the cooperative utilities in the state of Arkansas, the Arkansas Electric Cooperative, to obtain this cable. The Arkansas Electric Cooperative has the cable in stock and can provide the cable at the exact amount required for the substation project.
4. If previously used by the City, was this item or service single sourced?  
 Yes  No  Other comment \_\_\_\_\_
5. Are the supplies or service proprietary and only available from the manufacturer?  
 Yes  No  Other comment \_\_\_\_\_
6. If the answer to #5 is yes, please list the manufacturer: \_\_\_\_\_
7. Are the supplies or service only available from a single distributor?  
 Yes  No  Other comment \_\_\_\_\_
8. If the answer to #7 is yes, please list the distributor: \_\_\_\_\_
9. Is there only one distributor that services the region that includes the City of Kirkwood?  
 Yes  No  Other comment \_\_\_\_\_
10. If the answer to #9 if yes, please list the distributor and region served:  
\_\_\_\_\_
11. Is there a discount available for a limited period of time that would apply if supply or service is purchased from a single distributor that would be lower cost than market value for supply or service?

Yes  No  Other comment \_\_\_\_\_

12. If the answer to #11 is yes, please list the details known of the timeframe and discount available:

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RESOLUTION 69-2024

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF KIRKWOOD AND TRAFIGURA FOR FALL 2024 ENERGY AND CAPACITY TRANSACTIONS FOR THE ELECTRIC DEPARTMENT.

WHEREAS, the City of Kirkwood passed and approved Resolution 26-2019 on February 7, 2019 for entering into a contract with GDS Associates for Power Supply Planning Services for the Electric Department, and

WHEREAS, the Electric Department, along with Spiegel & McDairmid and GDS Associates suggests that the City of Kirkwood enter into a Master Agreement with Trafigura, an energy and capacity vendor, that will allow the Electric Department to monitor pricing and timing to be able to make transactions in a timely manner, and

WHEREAS, staff recommends that the Mayor enter into a Master Power Purchase and Sale Agreement between the City of Kirkwood and Trafigura for Fall 2024 Energy and Capacity Transactions for the Electric Department.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Master Power Purchase and Sale Agreement between the City of Kirkwood and Trafigura for Fall 2024 Energy and Capacity Transactions for the Electric Department.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

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Mayor, City of Kirkwood

ATTEST:

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City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan YES

Goal # & Title Goal 2, Objective 3B: Maintain utility rates that keep up with mar...

Background To Issue:

Kirkwood Electric executes master agreements with potential energy and capacity vendors to pre-qualify them for bids. Kirkwood Electric has been working with it's legal team at Spiegel & McDairmid and its energy consultant GDS Associates in order to establish a master agreement with Trafigura. Currently the department to make them a Trafigura a viable bidder. The department would like to do a Fall 2024 energy hedge transaction with Trafigura.

Recommendations and Action Requested:

Approval of a resolution to authorize the Director of Procurement to enter into a master agreement with Trafigura for future energy and/or capacity transactions.

Alternatives Available:

Bilateral agreements are great for avoiding price spikes in the market. Executing master agreements with vendors prior to transactions enables to department to monitor pricing and timing and transact at the appropriate time.

Does this project have a public information component?  Yes  No

Cost: \$0.00

Account #: 501-20-250-252-000-531005

Project #:

If YES, Budgeted Amount: \$22,500,000.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

The department recommends approval of the resolution. We're always monitoring the market to minimize wholesale electricity costs.

BY: Mark Petty

Date: 4/8/2024

Authenticated:

*You can attach up to 3 files along with this request.*



Kirkwood Trafigura - EEI  
Coversheet - Execution  
Version April 5 2024.docx  
Microsoft Word Document  
50.2 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**



Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/9/2024

Authenticated: sfo

*You can attach up to 3 files along with this request.*



 File Attachment

 File Attachment

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Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date: 4/9/2024

Authenticated: Jennifer Forgy

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Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-10-24

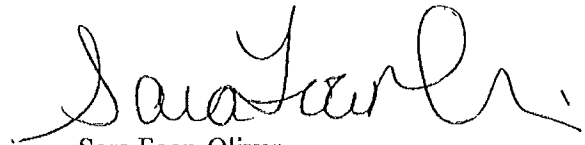
April 9, 2024

To: Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** Futures Purchase for Electric Capacity - 501212

The Kirkwood Electric Department is contracted with GDS & Associates to obtain offers for future capacity rates for the City of Kirkwood. Kirkwood Electric, along with its legal team, Spiegel & McDairmid and GDS Associates suggests entering into a master agreement with Trafigura, an energy and capacity vendor. This master agreement will allow the Electric Department to monitor pricing and timing and be able to make transactions in a timely manner.

Due to the volatility of the market, Mark Petty, Electric Director, asks for a resolution authorizing a master agreement with Trafigura for fall 2024 energy and capacity transactions.



Sara Foan-Oliver  
Procurement Director

# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*” ) is made as of the following date: \_\_\_\_\_ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name Trafigura Trading LLC, a Delaware limited liability company (“Trafigura” or “Party A”)

All Notices:

Street: Houston Center, 1401 McKinney Street, Suite 1500

City: Houston, Texas Zip: 77010

Attn: Power Contracts  
Phone: +1 832-203-6400  
Email: Powercontracts@trafigura.com  
Duns:  
Federal Tax ID Number: 06-1436098

**Invoices:**

Attn: Power Settlements  
Phone: +1 403-767-4970  
Email: USPower-Settlement@trafigura.com

**Scheduling:**

Attn: Power Operations  
Phone: 713-502-1027  
Email: 24HourPower@trafigura.com  
USPowerOperations@trafigura.com

**Payments:**

Attn: Power Settlements  
Phone: +1 403-767-4970  
Email: USPower-Settlement@trafigura.com

**Wire Transfer:**

BNK: JP Morgan Chase New York  
ABA: 021000021  
ACCT: 623316822

**Option Exercise Line: (Houston, Texas)**

Phone: +1 832 320 2801  
USPowerOperations@trafigura.com  
24HourPower@trafigura.com

Name: City of Kirkwood, Missouri (“Party B”)

All Notices: Sara Foan-Oliver, Procurement Director

Street: 212 S. Taylor Ave.

City: Kirkwood, MO Zip: 63122

Attn: Procurement Department  
Phone: 314-822-5851  
Duns: 150931962  
Federal Tax ID Number: 43-6001912

**Invoices:**

Attn: Tracy Girse, Sr. Procurement Officer/Analyst  
Phone: 314-822-5853  
Email: invoices@kirkwoodmo.org

**Scheduling:**

Attn: Mark Petty, Electric Dept. Director  
Phone: 314-822-5847  
Facsimile: 314-984-5920

**Payments:**

Attn: Tracy Girse, Sr. Procurement Officer/Analyst  
Phone: 314-822-5853  
Email: girsetc@kirkwoodmo.org

**Wire Transfer:**

BNK: US Bank  
ABA: 081000210  
ACCT: 152307768449

**Credit and Collections:**

Attn: Rod Nelson  
Phone: +1 832-320-2825  
Email: HoustonCredit@trafigura.com

**Credit and Collections:**

Attn: Allison Kromray  
Phone: 314-822-5837  
Email: kromraam@kirkwoodmo.org

**Confirmations:**

Attn: Power Contracts  
Phone:  
Email: Powercontracts@trafigura.com

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Houston Lawyers \_\_\_\_\_  
Phone: +1 832-203-6402 \_\_\_\_\_  
Email: HoustonLawyers@trafigura.com \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Jennifer Forgy  
Phone: 314-822-5833  
Email: forgyjl@kirkwoodmo.org

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff      Market-Base Rate Tariff, issued August 13, 2020 dated Docket Number ER20-2063-000 Party B  
Tariff              Tariff N/A \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

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**Article Two**

Transaction Terms and Conditions       Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

Remedies for Failure to Deliver or Receive       Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies       Cross Default for Party A:  
 Party A: \_\_\_\_\_

Other Entity: Trafigura Group Pte Ltd

Cross Default Amount shall mean an amount equal to 3% of Trafigura Group Pte. Ltd.'s Consolidated Group Equity.

Consolidated Group Equity shall mean, at any time:

(a) the total consolidated assets of Trafigura Group Pte Ltd which would be shown as assets on a consolidated balance sheet of Trafigura Group Pte Ltd as of such time prepared in accordance with GAAP,

minus

(b) the total consolidated liabilities of Trafigura Group Pte Ltd which would be shown as liabilities on a consolidated balance sheet of Trafigura Group Pte Ltd as of such time prepared in accordance with GAAP.

Cross Default for Party B:

Party B: \_\_\_\_\_ Cross Default Amount \$8,000,000

Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

#### 5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_

Option C (No Setoff)

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### **Article 8**

#### Credit and Collateral Requirements

### **8.1 Party A Credit Protection:**

(a) Financial Information:

Option A

Option B Specify: \_\_\_\_\_

Option C Specify: Party A may access Kirkwood's audited financial statements online.

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

- Not Applicable  
 Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable  
 Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: Not Applicable \_\_\_\_\_

Guarantee Amount: Not Applicable \_\_\_\_\_

**8.2 Party B Credit Protection:**

(a) Financial Information:

- Option A  
 Option B Specify:  
 Option C Specify: A copy of the latest audited annual report of Party A's Guarantor as shown at [www.trafigura.com](http://www.trafigura.com)

(b) Credit Assurances:

- Not Applicable  
 Applicable

(c) Collateral Threshold:

- Not Applicable  
 Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable  
 Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: Trafigura Group Pte Ltd

Guarantee Amount: As specified in the guarantee, as may be amended from time to time.

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**Article 10**

Confidentiality  Confidentiality Applicable  If not checked, inapplicable.

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**Schedule M**

- Party A is a Governmental Entity or Public Power System  
 Party B is a Governmental Entity or Public Power System  
 Add Section 3.6. If not checked, inapplicable  
 Add Section 8.4. If not checked, inapplicable

**Other Changes**

Specify, if any: \_\_\_\_\_

**COVER SHEET:**

**ARTICLE ONE: GENERAL DEFINITIONS**

1. Section 1.12 "Credit Rating", delete the word "issues" and replace it with "issuer".
2. Section 1.23 "Force Majeure" shall is deleted in its entirety and replaced with:

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the control of, or the result of acts or omissions by, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder, or to obtain Product at a more advantageous price or under more advantageous terms and conditions; (iii) the loss of failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price or under more advantageous terms. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (1) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (2) such

curtailment is due to 'force majeure' or an equivalent term as defined under the Transmission Provider's Tariff; provided, however, that existence of the two foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P. If the Claiming Party is Party B or a Governmental Entity or Public Power System, Force Majeure does not include any action taken by Party B or the Governmental Entity or Public Power System in its governmental capacity. "

3. Section 1.50 "Recording", delete the reference to 'Section 2.4' and replace it with "Section 2.5".

4. Section 1.51 "Replacement Price", (i) add the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line; (ii) delete the phrase "at Buyer's option" in line 5 and replace it with "absent a purchase"; and (iii) insert the phrase "(other than penalties imposed on Buyer under an open access transmission tariff as a result of the non-delivery)" after "penalties" in the seventh line.

5. Section 1.52 "S&P" shall be amended by (i) deleting the words "Rating" and "Group" from the first line and replacing with "Financial Services LLC" and (ii) by replacing the words in the parenthetical with "a subsidiary of McGraw-Hill Companies, Inc.".

6. Section 1.53 "Sales Price", (i) delete the phrase "at the Delivery Point" in the second line; (ii) delete the phrase "at Seller's option" in line 5 and replace it with "absent a sale"; and (iii) insert the phrase "(other than penalties imposed on Seller under an open access transmission tariff as a result of the non-receipt)" after "penalties" in the seventh line.

7. The Parties agree to add the following definitions in Article 1.

"Act" means those enabling statutes, governing documents, approvals, and orders granted to or made by Party B or any Governmental Entity or Public Power System with control, oversight or authority over Party B that authorize or are otherwise applicable to this Master Agreement and the Transactions entered into by the Parties hereunder."

"Governmental Entity or Public Power System" means Party B, a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories, or any combination thereof."

## **ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS**

1. Section 2.1 is hereby amended by deleting the phrase "if expressly required by either Party with respect to a particular Transaction, in writing" in the first sentence and replacing it with "in writing (if expressly required by either Party that a particular Transaction be in writing)," and by adding the following sentence at the end of Section 2.1: "The Parties intend, understand, and agree that the obligations of Party B pursuant to this Agreement shall constitute operation and maintenance expenses of Party B's electric utility system and Party B's obligation to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves."

2. The following is added as a new paragraph at the end of Section 2.2:

"This Master Agreement shall supersede and replace all prior agreements between the parties hereto with respect to transactions in Products. All previous transactions in Products executed between the Parties pursuant to prior agreements shall automatically transfer under this Master Agreement with no further notice. All transactions between Party A and Party B shall be governed by this Master Agreement, and are part of the single integrated agreement between the Parties consistent with the first paragraph of this Section 2.2."

3. Section 2.3 Confirmations is amended to define "Seller" as ("Party A") and Buyer as ("Party B") for the purposes of this section only, thereby designating Party A as the confirming party under this Agreement.



4. Section 2.4 is hereby amended by deleting the words "either orally or" in the seventh (7th) line.

5. Section 2.5 is amended as follows:

(a) in the first sentence of Section 2.5, delete the phrase "Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation";

(b) delete the last sentence in its entirety and replace with the following:

"In the event of any conflict among the terms of (i) a Transaction Confirmation which has been executed by both parties (or deemed accepted); (ii) the agreement of the parties that may be evidenced by a recorded conversation, electronic transmission or otherwise; (iii) these "Other Changes" (as amended, if applicable); and (iv) the Master Agreement's General Terms and Conditions (as amended, if applicable), the terms of the items shall govern in the priority listed above."

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

1. Section 3.2 is amended by inserting at the end thereof the following:

"Product deliveries shall be Scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and Scheduling practices for the relevant region and system operator."

2. New Section 3.4 and Section 3.5 are added to Article 3, immediately after Section 3.3 as follows:

"Section 3.4 Public Power System's Deliveries. On the Effective Date of this Master Agreement, Party B shall provide Party A with (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery, and performance by Party B (or other Governmental Entity or Public Power System, as applicable) of this Master Agreement and all Transactions hereunder.

Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment."

### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

1. The following is inserted as Section 4.3:

"4.3 With respect to Section 4.1 and Section 4.2, the origin of the values used in said calculations must be derived from commercially reasonable sources. Each Party agrees and covenants to use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the Agreement."

### **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

1. Delete Section 5.1 (f) in its entirety and replace with the following:

"such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity (1) fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party or (2) (i) fails to maintain a long-term unsecured, unsubordinated debt rating or any successor rating of at least Baa3 as determined by Moody's Investors Service Inc. (or such rating agency's successors or assigns) ("Moody's") and BBB- as determined by Standard & Poor's Ratings Group (or such rating agency's successors or assigns ("S&P")) or (ii) if no such ratings exist, the Policies (as defined below) in effect at the time, of the

non-Affected Party, would lead such non-Affected Party, solely as a result of a change in the nature, character, identity or condition of the Affected Party from its state (as a party to the Agreement) prior to such consolidation, amalgamation, merger or transfer, to decline to make an extension of credit to, or enter into a Transaction with, the resulting, surviving or transferee entity. For purposes of this definition, "Policies" means a party's (1) internal credit limits applicable to individual entities, (2) other limits on doing business with entities domiciled in certain jurisdictions or engaging in certain activities, or (3) internal restrictions on doing business with entities with whom such party has had prior adverse business relations."

2. Clause (i) of Section 5.1(g) is amended by deleting the words "or becoming capable at such time of being declared".

3. Section 5.1(h) is amended by:

In clause (ii), deleting the phrase "and such failure shall not be remedied within three (3) Business Days after written notice" in the third and fourth line thereof; and

Adding a clause (vi), "a Guarantor consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and, (i) the resulting entity fails to assume all of the obligations of such Guarantor hereunder or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity's creditworthiness is materially weaker than that of such Guarantor immediately prior to such action.

4. Section 5.1 is amended by inserting the following new subsection (i) and (j) to the end of 5.1:

"(i) the unexcused failure of a Party to meet its obligations to schedule and deliver or receive all or part of the Product pursuant to the terms and conditions specified in the Confirmation, provide such unexcused failure occurs over period of seven (7), or more, consecutive days; and,"

"(j) the Defaulting Party repudiates any Transaction or this Agreement."

5. Section 5.2 "Declaration of an Early Termination Date and Calculation of Settlement Amounts", is amended to (i) delete the following phrase from the last two lines: "under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable" and replace it with the following phrase: "under applicable law on the Early Termination Date, then each such Transactions (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as is reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Excluded Transactions shall be calculated in accordance with Section 5.3 below"; and (ii) reverse the placement of "(i)" and "to".

6. Section 5.4 is amended by (i) deleting in the last sentence the phrase "two (2)" and insert the phrase "five (5)", and (ii) adding the following sentence at the end thereof:

"Notwithstanding anything to the contrary in this Agreement, in determining the Termination Payment, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount that is derived from a calculation of the future economic gains or losses (present value or otherwise) from the Terminated Transaction(s)."

7. A new Section 5.8 is added, which states:

"It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the market price."

## **ARTICLE SIX: PAYMENT AND NETTING**

1. Section 6.3 is amended by deleting delete the words "two (2)" and insert the words "five (5)" in the fifth sentence.

## **ARTICLE SEVEN: LIMITATIONS**

1. Section 7.1 is amended by (1) adding "set forth in this Agreement" in the fifth sentence after "indemnity provision" and before "or otherwise", and (2) adding the following sentence at the end of Section 7.1: "The Parties agree that this Section 7.1 shall not limit in any way either Party's right to exercise the remedies set forth in Articles 4 and 5 of this Master Agreement or to recover the damages provided by such articles."

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

1. Section 8.1(d) and 8.2(d) are each amended by inserting on the fifth line thereof between the phrase "of receipt of notice" and the phrase ", then an Event of Default", the following phrase: "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing".

2. A new Section 8.4 is added as follows: "8.4 Interest Rate on Cash Collateral Held: Where cash is provided as Performance Assurance, the party providing the cash as Performance Assurance shall be paid by the party for whose benefit the Performance Assurance was provided interest on such cash at a rate equal to the Federal Funds Effective Rate as published under "Money Rates" in the *Wall Street Journal* minus one quarter (1/4) percentage point."

#### **ARTICLE NINE: GOVERNMENT CHARGES**

No Changes

#### **ARTICLE TEN: MISCELLANEOUS**

1. Section 10.1 is amended by adding the following at the end of the paragraph:

"Notwithstanding anything herein to the contrary, the Parties agree Subsections 5.2 - 5.6, Article Seven, Subsections 10.4, 10.6 and 10.11 shall survive the term of this Master Agreement."

2(a). Section 10.2 Representations and Warranties. Clauses (x), (xi) and (xii) are amended by replacing each section with the following respectively:

"(x) it is an "eligible commercial entity" within the meaning of Section 1a(17) of the Commodity Exchange Act, as amended (the "Commodity Exchange Act");

(xi) it is an "eligible contract participant" within the meaning of Section 1a(18) of the Commodity Exchange Act;

(xii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties; and"

2(b). A new Section 10.2(xiii) is added to read:

"(xiii) With respect to Party B, Party B represents and warrants to Party A on the date this Master Agreement is executed and continuing throughout its term, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement and all subsequent Transactions, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's bylaws or other regulations, (ii) all persons making up the governing body of the Governmental Entity or Public Power System are duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement and all subsequent Transactions by the Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic, or other governing documents and applicable law, (iv) the term of this Master Agreement and all Transactions hereunder does not extend beyond any applicable limitations imposed by the Act or other relevant constitutional, organic, or other governing documents and applicable law."

3. Section 10.4 is amended by deleting the word "Each" at the beginning of the first and second sentence and replacing it with the phrase "To the extent permitted by applicable law and only to the extent permitted by applicable law, each" and by inserting the phrase "except to the extent attributable to the indemnitee Party's gross negligence, willful misconduct or bad faith" at the end of the first sentence.

4. Section 10.5 is amended by deletion of the phrase "tax and enforceability assurance" in the eleventh and twelfth lines thereof and replacement therewith of the phrase, "tax, credit and enforceability assurance."

5. Section 10.6 is amended by inserting the below sentence after the first sentence:

"Provided, however, that the Missouri Constitution, Missouri Revised Statutes, and the Charter of the City of Kirkwood shall govern (i) issues relating to Party B's status as a municipality and (ii) the power and authority of Party B to enter into this Agreement and its authority to perform the specific terms hereof, including each Transaction hereunder, and the authorization of this Agreement and each such Transaction by Party B."

Section 10.6 is further amended by inserting at the end thereof the following new sentence:

"With respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the parties hereby consent to the nonexclusive jurisdiction of any Federal or State court located in the State of Missouri. Each party hereto irrevocably (i) submits to the non-exclusive jurisdiction of the federal courts located in Missouri, assuming they have subject matter jurisdiction, and otherwise to the non-exclusive jurisdiction of the state courts located in Missouri; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY (1) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FORGOING WAIVER AND (2) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE FOR ANY CREDIT SUPPORT DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION."

6. Section 10.8 is amended by adding the following to the end of Section 10.8:

"Each Party authorizes the other Party to affix an ink or digital stamp of its own signature to any Confirmation and agrees to be bound by a document executed in such a manner. This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page."

7. Section 10.10 is deleted in its entirety and replaced with the following:

"10.10 Forward Contracts. The Parties intend that (i) any Transaction with a maturity date more than two days after the date the Transaction is entered into shall constitute a "forward contract" within the meaning of title 11 of the United States Code (the "Bankruptcy Code"); (ii) certain Transactions may constitute "swap agreements" within the meaning of the Bankruptcy Code; (iii) each of Party A and Party B is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any Transactions that constitute "forward contracts" under statutory and decisional law in effect as of the date of this Agreement; (iv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code; (v) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and (vi) this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code."

8. Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet or any annex to this Master Agreement to a third party (other than the employees, lenders, counsel, accountants or advisors of a Party or its Affiliates to whom disclosure is reasonably required (with respect to a Party, its “Representatives”)) except in order to comply with any applicable law (including the Missouri public records and sunshine laws), regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request by a regulatory authority; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the non-disclosure obligations set forth in this Section 10.11; provided, that a breach of this Section 10.11 shall not give rise to a right to suspend or terminate any ongoing Transaction under this Agreement. Notwithstanding the foregoing, it shall not be deemed a breach of this Section 10.11 if a Party disclosed the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party is redacted and otherwise not disclosed. Each Party will cause its Representatives to comply with the non-disclosure obligations set forth in this Section 10.11.”

9. The following provision shall be added as Section 10.12:

"10.12 Imaged Documents. Any original executed Agreement, Confirmation, or other related document may be photocopied and stored on computer tapes and disks (the 'Imaged Agreement'). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, 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 Confirmation, or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation, or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence."

10. The following new Section 10.13 shall be added to Article Ten:

"10.13 Dodd-Frank Reporting Requirements. In the event this Master Agreement, or any transaction hereunder, requires reporting or recordkeeping under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Party A agrees that it shall report all such transactions to the extent they may be required to be reported under applicable law, and Party B agrees to promptly provide to Party A any necessary information related to Party B to the transactions requested by Party A in connection with such reporting. For the avoidance of doubt, each Party shall be responsible for complying with any record keeping requirements applicable to it or any transactions as required by law."

11. The following is added as Section 10.15 to the Master Agreement:

“10.15 Index Transactions.

(a) **Market Disruption**. If a Market Disruption Event occurs and is continuing during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth (12) Business Day following the first (1st) Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two (2)

dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determine a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

**(b) Corrections to Published Prices.** For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within thirty (30) days of the original publication or announcement (or longer period as permitted in any applicable regional transmission operator or independent system operator ("RTO") procedures or guidelines with respect to one or more RTO Price Sources), either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

**(c) Calculation of Floating Price.** For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged."

12. The following is added as Section 10.18 to the Master Agreement:

"10.18 FERC Standard of Review: Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. (2008) (the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

13. Article 10 is amended by inserting the following as Section 10.19:

"10.19 Resolution of Disputes. Any dispute or need of interpretation between the Parties involving or arising under this Agreement first shall be referred for resolution to a senior representative of each Party. Upon receipt of a notice describing the dispute and designating the notifying Party's senior representative and that the dispute is to be resolved by the Parties' senior representatives under this Agreement, the other Party shall promptly designate its senior representative to the notifying Party. The senior representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within fifteen (15) days after the notifying Party's notice was received by the other Party, or within such other period as the Parties may jointly agree to in writing, the Parties may submit the dispute to the Federal Energy Regulatory Commission or (subject to Section 10.12) any court of competent jurisdiction."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

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

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

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

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

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

Title: Mayor, City of Kirkwood \_\_\_\_\_

**DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.**



RESOLUTION 70-2024

A RESOLUTION ACCEPTING THE PROPOSAL OF TRAFIGURA IN THE AMOUNT OF \$251,372 FOR THE PURCHASE OF FALL BLOCK POWER FOR 2024 FOR THE ELECTRIC DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City of Kirkwood passed and approved Resolution 26-2019 on February 7, 2019 for Power Supply Planning Services for the Electric Department, and

WHEREAS, the Electric Department recommends purchasing Fall Block Power for 2024, and

WHEREAS, Trafigura submitted a proposal in the amount of \$251,372 for the purchase of Fall Block Power for 2024 for the Electric Department, and

WHEREAS, funds are available in Account #501-20-250-252-000-531005 (Electricity).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The proposal of Trafigura in the amount of \$251,372 for the purchase of Fall Block Power for 2024 for the Electric Department is hereby accepted and approved.

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a purchase order to Trafigura in the amount of \$251,372 for the purchase of Fall Block Power for 2024 for the Electric Department.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

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

# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan YES

Goal # & Title Goal 2; Objective 3 - Maintain utility rates that keep up with mar...

Background To Issue:

Every summer Kirkwood Electric purchases summertime block power to obtain a fixed price for power during the summer months and avoid summertime price spikes. This Fall, one of the Prairie State Generating units will be down for maintenance and Kirkwood Electric would like to purchase a Fall 2024 power block to avoid a Fall power price spike. Kirkwood's Power Portfolio consultant GDS has obtained bids for Fall power for 2024.

Recommendations and Action Requested:

Approval of a resolution to authorize the Procurement Director to enter into an agreement with Trafigura for \$251,372 for Fall block power for 2024.

Alternatives Available:

Without a Fall block power hedge purchase power for the Fall could be subject to price spikes

Does this project have a public information component?  Yes  No

Cost: \$251,372.00

Account #: 501-20-250-252-000-531005

Project #:

If YES, Budgeted Amount: \$22,549,744.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

The Department recommends approval of the resolution.

BY: Mark Petty

Date: 4/8/2024

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/9/2024

Authenticated: sfo

You can attach up to 3 files along with this request.



File Attachment

File Attachment

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$251,372 in account 501-20-250-252-000-531005, Electricity to approve the above as requested.

BY: Select...

Date: 4/9/2024

Authenticated: Jennifer Forgy

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-10-24

April 9, 2024

**To:** Russell B. Hawes, Chief Administrative Officer

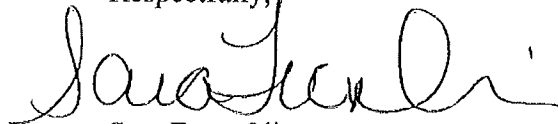
**For Your Consideration:** 2025 Electric Summertime Block Power - 501213

In the past, the Electric Department has purchased blocks of power for summer months to avoid summertime price spikes. The Prairie State generation units will be down for maintenance this fall and GDS & Associates, the City's power portfolio consultant, obtained bids for fall power for 2024 in the event of a fall price spike.

Mark Petty, Electric Director suggests entering into a power purchase agreement with Trafigura.

Attached is a request from Mark Petty for a resolution authorizing a purchase order for a not to exceed amount of \$251,372 with Trafigura for the purchase of fall block power for 2024.

Respectfully,

A handwritten signature in black ink, appearing to read "Sara Foan-Oliver". The signature is fluid and cursive, with a large initial "S" and a long horizontal stroke at the end.

Sara Foan-Oliver  
Procurement Director

RESOLUTION 68-2024

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF KIRKWOOD AND TRAFIGURA FOR FALL 2024 ENERGY AND CAPACITY TRANSACTIONS FOR THE ELECTRIC DEPARTMENT.

WHEREAS, the City of Kirkwood passed and approved Resolution 26-2019 on February 7, 2019 for entering into a contract with GDS Associates for Power Supply Planning Services for the Electric Department, and

WHEREAS, the Electric Department, along with Spiegel & McDairmid and GDS Associates suggests that the City of Kirkwood enter into a Master Agreement with Trafigura, an energy and capacity vendor, that will allow the Electric Department to monitor pricing and timing to be able to make transactions in a timely manner, and

WHEREAS, staff recommends that the Mayor enter into a Master Power Purchase and Sale Agreement between the City of Kirkwood and Trafigura for Fall 2024 Energy and Capacity Transactions for the Electric Department.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Master Power Purchase and Sale Agreement between the City of Kirkwood and Trafigura for Fall 2024 Energy and Capacity Transactions for the Electric Department.

SECTION 2. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

\_\_\_\_\_  
Mayor, City of Kirkwood

ATTEST:

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

# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan YES

Goal # & Title Goal 2, Objective 3B: Maintain utility rates that keep up with mar...

Background To Issue:

Kirkwood Electric executes master agreements with potential energy and capacity vendors to pre-qualify them for bids. Kirkwood Electric has been working with it's legal team at Spiegel & McDairmid and its energy consultant GDS Associates in order to establish a master agreement with Trafigura. Currently the department to make them a Trafigura a viable bidder. The department would like to do a Fall 2024 energy hedge transaction with Trafigura.

Recommendations and Action Requested:

Approval of a resolution to authorize the Director of Procurement to enter into a master agreement with Trafigura for future energy and/or capacity transactions.

Alternatives Available:

Bilateral agreements are great for avoiding price spikes in the market. Executing master agreements with vendors prior to transactions enables to department to monitor pricing and timing and transact at the appropriate time.

Does this project have a public information component?  Yes  No

Cost: \$0.00

Account #: 501-20-250-252-000-531005

Project #:

If YES, Budgeted Amount: \$22,500,000.00 If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

The department recommends approval of the resolution. We're always monitoring the market to minimize wholesale electricity costs.

BY: Mark Petty

Date: 4/8/2024

Authenticated:

*You can attach up to 3 files along with this request.*



Kirkwood Trafigura - EEI  
Coversheet - Execution  
Version April 5 2024.docx  
Microsoft Word Document  
50.2 KB

File Attachment

File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/9/2024

Authenticated: sfo

*You can attach up to 3 files along with this request.*



File Attachment

File Attachment

---

Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

BY: Select...

Date: 4/9/2024

Authenticated: Jennifer Forgy

---

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve     Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-10-24

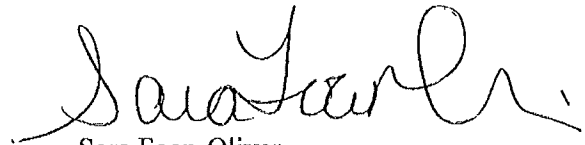
April 9, 2024

To: Russell B. Hawes, Chief Administrative Officer

**For Your Consideration:** Futures Purchase for Electric Capacity - 501212

The Kirkwood Electric Department is contracted with GDS & Associates to obtain offers for future capacity rates for the City of Kirkwood. Kirkwood Electric, along with its legal team, Spiegel & McDairmid and GDS Associates suggests entering into a master agreement with Trafigura, an energy and capacity vendor. This master agreement will allow the Electric Department to monitor pricing and timing and be able to make transactions in a timely manner.

Due to the volatility of the market, Mark Petty, Electric Director, asks for a resolution authorizing a master agreement with Trafigura for fall 2024 energy and capacity transactions.



Sara Foan-Oliver  
Procurement Director



**Credit and Collections:**

Attn: Rod Nelson  
Phone: +1 832-320-2825  
Email: HoustonCredit@trafigura.com

**Credit and Collections:**

Attn: Allison Kromray  
Phone: 314-822-5837  
Email: kromraam@kirkwoodmo.org

**Confirmations:**

Attn: Power Contracts  
Phone:  
Email: Powercontracts@trafigura.com

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Houston Lawyers \_\_\_\_\_  
Phone: +1 832-203-6402 \_\_\_\_\_  
Email: HoustonLawyers@trafigura.com \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Jennifer Forgy  
Phone: 314-822-5833  
Email: forgyjl@kirkwoodmo.org

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff      Market-Base Rate Tariff, issued August 13, 2020 dated Docket Number ER20-2063-000 Party B  
Tariff              Tariff N/A \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

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**Article Two**

Transaction Terms and Conditions       Optional provision in Section 2.4. If not checked, inapplicable.

---

**Article Four**

Remedies for Failure to Deliver or Receive       Accelerated Payment of Damages. If not checked, inapplicable.

---

**Article Five**

Events of Default; Remedies       Cross Default for Party A:  
 Party A: \_\_\_\_\_

Other Entity: Trafigura Group Pte Ltd

Cross Default Amount shall mean an amount equal to 3% of Trafigura Group Pte. Ltd.'s Consolidated Group Equity.

Consolidated Group Equity shall mean, at any time:

(a) the total consolidated assets of Trafigura Group Pte Ltd which would be shown as assets on a consolidated balance sheet of Trafigura Group Pte Ltd as of such time prepared in accordance with GAAP,

minus

(b) the total consolidated liabilities of Trafigura Group Pte Ltd which would be shown as liabilities on a consolidated balance sheet of Trafigura Group Pte Ltd as of such time prepared in accordance with GAAP.

Cross Default for Party B:

Party B: \_\_\_\_\_ Cross Default Amount \$8,000,000

Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

#### 5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_

Option C (No Setoff)

---

### **Article 8**

#### Credit and Collateral Requirements

### **8.1 Party A Credit Protection:**

(a) Financial Information:

Option A

Option B Specify: \_\_\_\_\_

Option C Specify: Party A may access Kirkwood's audited financial statements online.

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

- Not Applicable  
 Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable  
 Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: Not Applicable \_\_\_\_\_

Guarantee Amount: Not Applicable \_\_\_\_\_

**8.2 Party B Credit Protection:**

(a) Financial Information:

- Option A  
 Option B Specify:  
 Option C Specify: A copy of the latest audited annual report of Party A's Guarantor as shown at [www.trafigura.com](http://www.trafigura.com)

(b) Credit Assurances:

- Not Applicable  
 Applicable

(c) Collateral Threshold:

- Not Applicable  
 Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- Not Applicable  
 Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: Trafigura Group Pte Ltd

Guarantee Amount: As specified in the guarantee, as may be amended from time to time.

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**Article 10**

Confidentiality  Confidentiality Applicable  If not checked, inapplicable.

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**Schedule M**

- Party A is a Governmental Entity or Public Power System  
 Party B is a Governmental Entity or Public Power System  
 Add Section 3.6. If not checked, inapplicable  
 Add Section 8.4. If not checked, inapplicable

**Other Changes**

Specify, if any: \_\_\_\_\_

**COVER SHEET:**

**ARTICLE ONE: GENERAL DEFINITIONS**

1. Section 1.12 "Credit Rating", delete the word "issues" and replace it with "issuer".
2. Section 1.23 "Force Majeure" shall is deleted in its entirety and replaced with:

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the control of, or the result of acts or omissions by, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder, or to obtain Product at a more advantageous price or under more advantageous terms and conditions; (iii) the loss of failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price or under more advantageous terms. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (1) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (2) such

curtailment is due to 'force majeure' or an equivalent term as defined under the Transmission Provider's Tariff; provided, however, that existence of the two foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P. If the Claiming Party is Party B or a Governmental Entity or Public Power System, Force Majeure does not include any action taken by Party B or the Governmental Entity or Public Power System in its governmental capacity. "

3. Section 1.50 "Recording", delete the reference to 'Section 2.4' and replace it with "Section 2.5".

4. Section 1.51 "Replacement Price", (i) add the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line; (ii) delete the phrase "at Buyer's option" in line 5 and replace it with "absent a purchase"; and (iii) insert the phrase "(other than penalties imposed on Buyer under an open access transmission tariff as a result of the non-delivery)" after "penalties" in the seventh line.

5. Section 1.52 "S&P" shall be amended by (i) deleting the words "Rating" and "Group" from the first line and replacing with "Financial Services LLC" and (ii) by replacing the words in the parenthetical with "a subsidiary of McGraw-Hill Companies, Inc.".

6. Section 1.53 "Sales Price", (i) delete the phrase "at the Delivery Point" in the second line; (ii) delete the phrase "at Seller's option" in line 5 and replace it with "absent a sale"; and (iii) insert the phrase "(other than penalties imposed on Seller under an open access transmission tariff as a result of the non-receipt)" after "penalties" in the seventh line.

7. The Parties agree to add the following definitions in Article 1.

"Act" means those enabling statutes, governing documents, approvals, and orders granted to or made by Party B or any Governmental Entity or Public Power System with control, oversight or authority over Party B that authorize or are otherwise applicable to this Master Agreement and the Transactions entered into by the Parties hereunder."

"Governmental Entity or Public Power System" means Party B, a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories, or any combination thereof."

## **ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS**

1. Section 2.1 is hereby amended by deleting the phrase "if expressly required by either Party with respect to a particular Transaction, in writing" in the first sentence and replacing it with "in writing (if expressly required by either Party that a particular Transaction be in writing)," and by adding the following sentence at the end of Section 2.1: "The Parties intend, understand, and agree that the obligations of Party B pursuant to this Agreement shall constitute operation and maintenance expenses of Party B's electric utility system and Party B's obligation to make payments under this Agreement shall be limited to the obligation to make payments from revenues of its electric utility system and available electric utility system reserves."

2. The following is added as a new paragraph at the end of Section 2.2:

"This Master Agreement shall supersede and replace all prior agreements between the parties hereto with respect to transactions in Products. All previous transactions in Products executed between the Parties pursuant to prior agreements shall automatically transfer under this Master Agreement with no further notice. All transactions between Party A and Party B shall be governed by this Master Agreement, and are part of the single integrated agreement between the Parties consistent with the first paragraph of this Section 2.2."

3. Section 2.3 Confirmations is amended to define "Seller" as ("Party A") and Buyer as ("Party B") for the purposes of this section only, thereby designating Party A as the confirming party under this Agreement.

4. Section 2.4 is hereby amended by deleting the words "either orally or" in the seventh (7th) line.

5. Section 2.5 is amended as follows:

(a) in the first sentence of Section 2.5, delete the phrase "Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation";

(b) delete the last sentence in its entirety and replace with the following:

"In the event of any conflict among the terms of (i) a Transaction Confirmation which has been executed by both parties (or deemed accepted); (ii) the agreement of the parties that may be evidenced by a recorded conversation, electronic transmission or otherwise; (iii) these "Other Changes" (as amended, if applicable); and (iv) the Master Agreement's General Terms and Conditions (as amended, if applicable), the terms of the items shall govern in the priority listed above."

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

1. Section 3.2 is amended by inserting at the end thereof the following:

"Product deliveries shall be Scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and Scheduling practices for the relevant region and system operator."

2. New Section 3.4 and Section 3.5 are added to Article 3, immediately after Section 3.3 as follows:

"Section 3.4 Public Power System's Deliveries. On the Effective Date of this Master Agreement, Party B shall provide Party A with (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery, and performance by Party B (or other Governmental Entity or Public Power System, as applicable) of this Master Agreement and all Transactions hereunder.

Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment."

### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

1. The following is inserted as Section 4.3:

"4.3 With respect to Section 4.1 and Section 4.2, the origin of the values used in said calculations must be derived from commercially reasonable sources. Each Party agrees and covenants to use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the Agreement."

### **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

1. Delete Section 5.1 (f) in its entirety and replace with the following:

"such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity (1) fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party or (2) (i) fails to maintain a long-term unsecured, unsubordinated debt rating or any successor rating of at least Baa3 as determined by Moody's Investors Service Inc. (or such rating agency's successors or assigns) ("Moody's") and BBB- as determined by Standard & Poor's Ratings Group (or such rating agency's successors or assigns ("S&P")) or (ii) if no such ratings exist, the Policies (as defined below) in effect at the time, of the

non-Affected Party, would lead such non-Affected Party, solely as a result of a change in the nature, character, identity or condition of the Affected Party from its state (as a party to the Agreement) prior to such consolidation, amalgamation, merger or transfer, to decline to make an extension of credit to, or enter into a Transaction with, the resulting, surviving or transferee entity. For purposes of this definition, "Policies" means a party's (1) internal credit limits applicable to individual entities, (2) other limits on doing business with entities domiciled in certain jurisdictions or engaging in certain activities, or (3) internal restrictions on doing business with entities with whom such party has had prior adverse business relations."

2. Clause (i) of Section 5.1(g) is amended by deleting the words "or becoming capable at such time of being declared".

3. Section 5.1(h) is amended by:

In clause (ii), deleting the phrase "and such failure shall not be remedied within three (3) Business Days after written notice" in the third and fourth line thereof; and

Adding a clause (vi), "a Guarantor consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and, (i) the resulting entity fails to assume all of the obligations of such Guarantor hereunder or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity's creditworthiness is materially weaker than that of such Guarantor immediately prior to such action.

4. Section 5.1 is amended by inserting the following new subsection (i) and (j) to the end of 5.1:

"(i) the unexcused failure of a Party to meet its obligations to schedule and deliver or receive all or part of the Product pursuant to the terms and conditions specified in the Confirmation, provide such unexcused failure occurs over period of seven (7), or more, consecutive days; and,"

"(j) the Defaulting Party repudiates any Transaction or this Agreement."

5. Section 5.2 "Declaration of an Early Termination Date and Calculation of Settlement Amounts", is amended to (i) delete the following phrase from the last two lines: "under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable" and replace it with the following phrase: "under applicable law on the Early Termination Date, then each such Transactions (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as is reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Excluded Transactions shall be calculated in accordance with Section 5.3 below"; and (ii) reverse the placement of "(i)" and "to".

6. Section 5.4 is amended by (i) deleting in the last sentence the phrase "two (2)" and insert the phrase "five (5)", and (ii) adding the following sentence at the end thereof:

"Notwithstanding anything to the contrary in this Agreement, in determining the Termination Payment, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount that is derived from a calculation of the future economic gains or losses (present value or otherwise) from the Terminated Transaction(s)."

7. A new Section 5.8 is added, which states:

"It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the market price."

## **ARTICLE SIX: PAYMENT AND NETTING**

1. Section 6.3 is amended by deleting delete the words "two (2)" and insert the words "five (5)" in the fifth sentence.

## **ARTICLE SEVEN: LIMITATIONS**

1. Section 7.1 is amended by (1) adding "set forth in this Agreement" in the fifth sentence after "indemnity provision" and before "or otherwise", and (2) adding the following sentence at the end of Section 7.1: "The Parties agree that this Section 7.1 shall not limit in any way either Party's right to exercise the remedies set forth in Articles 4 and 5 of this Master Agreement or to recover the damages provided by such articles."

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

1. Section 8.1(d) and 8.2(d) are each amended by inserting on the fifth line thereof between the phrase "of receipt of notice" and the phrase ", then an Event of Default", the following phrase: "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing".

2. A new Section 8.4 is added as follows: "8.4 Interest Rate on Cash Collateral Held: Where cash is provided as Performance Assurance, the party providing the cash as Performance Assurance shall be paid by the party for whose benefit the Performance Assurance was provided interest on such cash at a rate equal to the Federal Funds Effective Rate as published under "Money Rates" in the *Wall Street Journal* minus one quarter (1/4) percentage point."

#### **ARTICLE NINE: GOVERNMENT CHARGES**

No Changes

#### **ARTICLE TEN: MISCELLANEOUS**

1. Section 10.1 is amended by adding the following at the end of the paragraph:

"Notwithstanding anything herein to the contrary, the Parties agree Subsections 5.2 - 5.6, Article Seven, Subsections 10.4, 10.6 and 10.11 shall survive the term of this Master Agreement."

2(a). Section 10.2 Representations and Warranties. Clauses (x), (xi) and (xii) are amended by replacing each section with the following respectively:

"(x) it is an "eligible commercial entity" within the meaning of Section 1a(17) of the Commodity Exchange Act, as amended (the "Commodity Exchange Act");

(xi) it is an "eligible contract participant" within the meaning of Section 1a(18) of the Commodity Exchange Act;

(xii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties; and"

2(b). A new Section 10.2(xiii) is added to read:

"(xiii) With respect to Party B, Party B represents and warrants to Party A on the date this Master Agreement is executed and continuing throughout its term, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement and all subsequent Transactions, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's bylaws or other regulations, (ii) all persons making up the governing body of the Governmental Entity or Public Power System are duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement and all subsequent Transactions by the Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic, or other governing documents and applicable law, (iv) the term of this Master Agreement and all Transactions hereunder does not extend beyond any applicable limitations imposed by the Act or other relevant constitutional, organic, or other governing documents and applicable law."



3. Section 10.4 is amended by deleting the word "Each" at the beginning of the first and second sentence and replacing it with the phrase "To the extent permitted by applicable law and only to the extent permitted by applicable law, each" and by inserting the phrase "except to the extent attributable to the indemnitee Party's gross negligence, willful misconduct or bad faith" at the end of the first sentence.

4. Section 10.5 is amended by deletion of the phrase "tax and enforceability assurance" in the eleventh and twelfth lines thereof and replacement therewith of the phrase, "tax, credit and enforceability assurance."

5. Section 10.6 is amended by inserting the below sentence after the first sentence:

"Provided, however, that the Missouri Constitution, Missouri Revised Statutes, and the Charter of the City of Kirkwood shall govern (i) issues relating to Party B's status as a municipality and (ii) the power and authority of Party B to enter into this Agreement and its authority to perform the specific terms hereof, including each Transaction hereunder, and the authorization of this Agreement and each such Transaction by Party B."

Section 10.6 is further amended by inserting at the end thereof the following new sentence:

"With respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the parties hereby consent to the nonexclusive jurisdiction of any Federal or State court located in the State of Missouri. Each party hereto irrevocably (i) submits to the non-exclusive jurisdiction of the federal courts located in Missouri, assuming they have subject matter jurisdiction, and otherwise to the non-exclusive jurisdiction of the state courts located in Missouri; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY (1) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FORGOING WAIVER AND (2) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE FOR ANY CREDIT SUPPORT DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION."

6. Section 10.8 is amended by adding the following to the end of Section 10.8:

"Each Party authorizes the other Party to affix an ink or digital stamp of its own signature to any Confirmation and agrees to be bound by a document executed in such a manner. This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page."

7. Section 10.10 is deleted in its entirety and replaced with the following:

"10.10 Forward Contracts. The Parties intend that (i) any Transaction with a maturity date more than two days after the date the Transaction is entered into shall constitute a "forward contract" within the meaning of title 11 of the United States Code (the "Bankruptcy Code"); (ii) certain Transactions may constitute "swap agreements" within the meaning of the Bankruptcy Code; (iii) each of Party A and Party B is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any Transactions that constitute "forward contracts" under statutory and decisional law in effect as of the date of this Agreement; (iv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code; (v) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and (vi) this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code."

8. Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet or any annex to this Master Agreement to a third party (other than the employees, lenders, counsel, accountants or advisors of a Party or its Affiliates to whom disclosure is reasonably required (with respect to a Party, its “Representatives”)) except in order to comply with any applicable law (including the Missouri public records and sunshine laws), regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request by a regulatory authority; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the non-disclosure obligations set forth in this Section 10.11; provided, that a breach of this Section 10.11 shall not give rise to a right to suspend or terminate any ongoing Transaction under this Agreement. Notwithstanding the foregoing, it shall not be deemed a breach of this Section 10.11 if a Party disclosed the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party is redacted and otherwise not disclosed. Each Party will cause its Representatives to comply with the non-disclosure obligations set forth in this Section 10.11.”

9. The following provision shall be added as Section 10.12:

"10.12 Imaged Documents. Any original executed Agreement, Confirmation, or other related document may be photocopied and stored on computer tapes and disks (the 'Imaged Agreement'). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, 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 Confirmation, or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation, or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence."

10. The following new Section 10.13 shall be added to Article Ten:

"10.13 Dodd-Frank Reporting Requirements. In the event this Master Agreement, or any transaction hereunder, requires reporting or recordkeeping under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Party A agrees that it shall report all such transactions to the extent they may be required to be reported under applicable law, and Party B agrees to promptly provide to Party A any necessary information related to Party B to the transactions requested by Party A in connection with such reporting. For the avoidance of doubt, each Party shall be responsible for complying with any record keeping requirements applicable to it or any transactions as required by law."

11. The following is added as Section 10.15 to the Master Agreement:

“10.15 Index Transactions.

(a) **Market Disruption**. If a Market Disruption Event occurs and is continuing during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth (12) Business Day following the first (1st) Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two (2)

dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means a Contract Price specified in a Transaction that is based upon a Price Source.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determine a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

(b) **Corrections to Published Prices.** For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within thirty (30) days of the original publication or announcement (or longer period as permitted in any applicable regional transmission operator or independent system operator ("RTO") procedures or guidelines with respect to one or more RTO Price Sources), either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) **Calculation of Floating Price.** For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged."

12. The following is added as Section 10.18 to the Master Agreement:

"10.18 FERC Standard of Review: Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. (2008) (the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

13. Article 10 is amended by inserting the following as Section 10.19:

"10.19 Resolution of Disputes. Any dispute or need of interpretation between the Parties involving or arising under this Agreement first shall be referred for resolution to a senior representative of each Party. Upon receipt of a notice describing the dispute and designating the notifying Party's senior representative and that the dispute is to be resolved by the Parties' senior representatives under this Agreement, the other Party shall promptly designate its senior representative to the notifying Party. The senior representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within fifteen (15) days after the notifying Party's notice was received by the other Party, or within such other period as the Parties may jointly agree to in writing, the Parties may submit the dispute to the Federal Energy Regulatory Commission or (subject to Section 10.12) any court of competent jurisdiction."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

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

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

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

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

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

Title: Mayor, City of Kirkwood \_\_\_\_\_

**DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.**

RESOLUTION 69-2024

A RESOLUTION ACCEPTING THE PROPOSAL OF TRAFIGURA IN THE AMOUNT OF \$251,372 FOR THE PURCHASE OF FALL BLOCK POWER FOR 2024 FOR THE ELECTRIC DEPARTMENT AND AUTHORIZING AND DIRECTING THE DIRECTOR OF PROCUREMENT TO ISSUE A PURCHASE ORDER.

WHEREAS, the City of Kirkwood passed and approved Resolution 26-2019 on February 7, 2019 for Power Supply Planning Services for the Electric Department, and

WHEREAS, the Electric Department recommends purchasing Fall Block Power for 2024, and

WHEREAS, Trafigura submitted a proposal in the amount of \$251,372 for the purchase of Fall Block Power for 2024 for the Electric Department, and

WHEREAS, funds are available in Account #501-20-250-252-000-531005 (Electricity).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KIRKWOOD, MISSOURI, AS FOLLOWS:

SECTION 1. The proposal of Trafigura in the amount of \$251,372 for the purchase of Fall Block Power for 2024 for the Electric Department is hereby accepted and approved.

SECTION 2. The Director of Procurement is hereby authorized and directed to issue a purchase order to Trafigura in the amount of \$251,372 for the purchase of Fall Block Power for 2024 for the Electric Department.

SECTION 3. This Resolution shall be in full force and effect after its passage and approval.

PASSED AND APPROVED THIS 18<sup>TH</sup> DAY OF APRIL 2024.

---

Mayor, City of Kirkwood

ATTEST:

---

City Clerk

# Legislation Request

## Resolution

Place On The Agenda Of: 4/18/2024

Step #1:

Strategic Plan YES

Goal # & Title Goal 2; Objective 3 - Maintain utility rates that keep up with mar...

Background To Issue:

Every summer Kirkwood Electric purchases summertime block power to obtain a fixed price for power during the summer months and avoid summertime price spikes. This Fall, one of the Prairie State Generating units will be down for maintenance and Kirkwood Electric would like to purchase a Fall 2024 power block to avoid a Fall power price spike. Kirkwood's Power Portfolio consultant GDS has obtained bids for Fall power for 2024.

Recommendations and Action Requested:

Approval of a resolution to authorize the Procurement Director to enter into an agreement with Trafigura for \$251,372 for Fall block power for 2024.

Alternatives Available:

Without a Fall block power hedge purchase power for the Fall could be subject to price spikes

Does this project have a public information component?  Yes  No

Cost: \$251,372.00

Account #: 501-20-250-252-000-531005

Project #:

If YES, Budgeted Amount: \$22,549,744.00

If NO, or if insufficient funding (Complete Step #3).

Department Head Comments:

Budgeted: YES

The Department recommends approval of the resolution.

BY: Mark Petty

Date: 4/8/2024

Authenticated:

You can attach up to 3 files along with this request.

 File Attachment

 File Attachment

 File Attachment

Step #2: If request involves approval of bids, contracts, proposals, purchases, etc. **(Must have Purchasing Director's approval).**

Approve

Purchasing Director's Comments:

BY: Sara Foan-Oliver

Date: 4/9/2024

Authenticated: sfo

You can attach up to 3 files along with this request.



Step #3: If budgetary approval is required (**Must have Finance Department's approval**).

Select...

From Account # or Fund Name:

To Account # or Fund Name:

Finance Director's Comments:

Budgetary appropriation is available and sufficient for \$251,372 in account 501-20-250-252-000-531005, Electricity to approve the above as requested.

BY: Select...

Date: 4/9/2024

Authenticated: Jennifer Forgy

Step #4: All Requests Require Chief Administrative Officer Approval for Placement on Meeting Agenda.

Approve  Disapprove

Chief Administrative Officer's Comments:

BY: 

Date: 4-10-24



April 9, 2024

**To:** Russell B. Hawes, Chief Administrative Officer

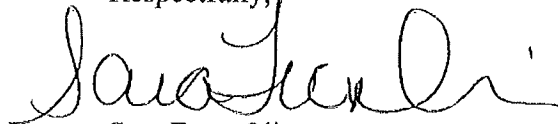
**For Your Consideration:** 2025 Electric Summertime Block Power - 501213

In the past, the Electric Department has purchased blocks of power for summer months to avoid summertime price spikes. The Prairie State generation units will be down for maintenance this fall and GDS & Associates, the City's power portfolio consultant, obtained bids for fall power for 2024 in the event of a fall price spike.

Mark Petty, Electric Director suggests entering into a power purchase agreement with Trafigura.

Attached is a request from Mark Petty for a resolution authorizing a purchase order for a not to exceed amount of \$251,372 with Trafigura for the purchase of fall block power for 2024.

Respectfully,

A handwritten signature in black ink, appearing to read "Sara Foan-Oliver". The signature is fluid and cursive, with a large initial "S" and "F".

Sara Foan-Oliver  
Procurement Director

14600



CITY OF KIRKWOOD  
139 S. Kirkwood Road  
Kirkwood, MO 63122

Approved: \_\_\_\_\_

PAID

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

APR 05 2024

- NEW
- RENEWAL

APPLICATION FOR LIQUOR LICENSE

Type of License Requested:

All applicants must pay \$20 Background check made out to: Mo Highway Patrol

- Intoxicating Liquor by the Drink, Not including Sunday \$450.00
- Intoxicating Liquor by the Drink, Plus Sunday \$550.00
- Intoxicating Liquor in Original Package, Not including Sunday \$150.00
- Intoxicating Liquor in Original Package, Plus Sunday \$450.00
- Malt Liquor by Drink, Not Including Sunday \$200.00
- Malt Liquor by Drink, Plus Sunday \$500.00
- Malt Liquor in Original Package, Not including Sunday \$22.50
- Malt Liquor in Original Package, Including Sunday \$322.50
- Malt Liquor and Wine by the Drink, Not including Sundays \$225.00
- Malt Liquor and Wine by the Drink, Including Sundays \$525.00
- Wholesaler/Distributor Intoxicating Liquor, All Kinds \$375.00
- Wholesaler/Distributor Intoxicating Liquor, =<22% Alcohol by Weight \$150.00
- Wholesaler/Distributor Intoxicating Liquor, =<5% Alcohol by Weight \$75.00
- Picnic-License (\$25.00 for first day, \$10.00 for each additional day) No organization shall obtain permits for more than 7 days per year. Date of event: \_\_\_\_\_ Place event will be held: \_\_\_\_\_

\*\*Establishments licensed to sell intoxicating liquor in the original package may apply for and obtain a license to conduct wine tasting on the premises of the licensed establishment for an additional fee of \$25.00.

Name of Company: 7-Eleven Store #19507L

Location Address: 639 West Woodbine Avenue Phone: (314) 821-2251

Name of Owner of Business: 7-Eleven Sales Corporation Phone: \_\_\_\_\_

Address of Owner: 3200 Hackberry Road, Irving, TX 75063

Name of Managing Officer: Matthew A. Jacober Phone: \_\_\_\_\_

Address of Managing Officer: 16805 Pacland Place, Chesterfield, Missouri 63005

Date of Birth: \_\_\_\_\_ Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Place of Birth: Highland, Illinois

Driver's License #: \_\_\_\_\_ Social Security \_\_\_\_\_

Do you have an interest in any liquor license which is now in see Attachment A.

If so, give details \_\_\_\_\_

Have you previously held a liquor license of any type? see Attachment A.

If so, give details \_\_\_\_\_

Have you ever had a liquor license suspended or revoked? No

If so, give details \_\_\_\_\_

Have you ever been convicted of any violation of a federal law, state statute or local ordinance relating to toxicating liquor? No

If so, give details \_\_\_\_\_

Matthew A. Jacober  
Signature of Applicant

Matthew A. Jacober  
Print Applicant's Name