



MEETING DATE: October 11, 2022

ITEM NUMBER: 9.C

SECOND READING: October 25, 2022

{{customfields.ResoOrdNumber}}

TYPE OF ITEM: Consent

PRESENTED BY:

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SUBJECT/AGENDA TITLE:

A Bill For An Ordinance Approving The Agreement, Amendment To The Existing Oil And Gas Agreements, And Mutual Release And Associated Documents In Furtherance

EXECUTIVE SUMMARY:

The agreements before City Council tonight are the result of negotiations with Cub Creek Energy and TOP Operating regarding existing oil and gas agreements and leases, and do not propose leasing any additional properties nor contemplate expansion of existing oil and gas operations. Instead, these negotiations are a continuation of a decade long City Council-directed effort to eliminate oil and gas surface operations within the City, and to protect City residents and natural resources, while also providing the City with current and competitive mineral leases.

Previously, the City entered into a series of agreements with TOP Operating and Cub Creek, including the 2012 Master Contract and Operator's Agreement with TOP Operating (Master Contract) and the 2018 Site Relinquishment and Lease Agreement with Cub Creek and TOP Operating (Site Relinquishment Agreement). A recent Weld County District Court decision provided the City with an opportunity to initiate negotiations with Cub Creek and TOP Operating to restructure the Master Contract and Site Relinquishment Agreement. The outcome of those negotiations is reflected in the attached Agreement, Amendment to the Existing Oil & Gas Agreements and Mutual Release ("Amendment"), the highlights of which include:

- The elimination of the City's obligation to pay \$3 million to TOP Operating.
- The replacement of existing leases for the City's Upper Adrian, Eckel, and Kolby mineral rights with new leases which will increase royalty rates to 20% and include prevailing, modern terms and conditions to better protect City resources.
- The amendment of the Koester and Northern Shores mineral leases to increase the royalty rate paid to the City from 16 to 17%.
- Each of the above mineral leases continue to prohibit any surface oil and gas activities

on property owned by, or located within, the City.

- The ratification of the City's Stamp mineral lease.
- An agreement with TOP Operating wherein the City will complete the final top soil protection and site restoration of the City's properties in the immediate vicinity of several plugged and abandoned oil and gas wells with City staff trained and equipped to better protect City resources.
- An extension of the term of the Access Road Revocable Permit and Agreement granted to Cub Creek, consistent with the City's Charter, to 30 years ending in 2048.
- The estimated value of the renegotiated Master Contract and Site Relinquishment Agreement terms is \$4.78M in additional revenue over the life of Knight Wells.

COUNCIL OPTIONS:

1. Approve the Ordinance authorizing the execution of the Agreement, Amendment to the Existing Oil and Gas Agreements and Mutual Release.
2. Do not approve the Ordinance.

RECOMMENDED OPTIONS:

Option 1.

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:

The Amendment eliminates the City's obligation to pay TOP Operating the \$3 million as required by the Site Relinquishment Agreement; creates replacement leases on the City's Upper Adrian, Eckel, and Kolby properties that result in increased royalty rates to 20% of total revenues along with a lease signing bonus of \$1,500 per acre; and amends the Koester and Northern Shores leases to increase the royalty rate from 16% to 17%. The replacement and amended leases will be retroactive to November 18, 2021, the date of first production from the Knight wells. The estimated first year financial value of increased royalty rates to the City is \$530,000, which combined with the \$3 million from eliminating the Top payment yields an overall financial benefit to the City of \$3.53 million in 2022.

BACKGROUND AND ISSUE ANALYSIS:

For the past decade, staff has been actively pursuing efforts to mitigate, and where possible, eliminate oil and gas surface operations within the City consistent with the direction of the City Council. Those efforts have centered on that portion of the City located in Weld County where the City owns approximately 2,420 acres of property plus an additional 545 acres preserved by conservation easements. The reason for that focus area is that this portion of the City is most susceptible to oil and gas development due to its location, preexisting mineral leases, and lack of residential or other urban development and underlying zoning. The City's properties were purchased with a variety of city funds including the Open Space, Water, Sanitation, General and other funds. The City has also acquired the mineral rights beneath many of those properties.

In 2012, City entered into the Master Contract that resulted in the consolidation of potentially hundreds of well sites to 11 consolidated sites. In 2018, the City entered into the Site Relinquishment Agreement that resulted in the elimination of all 11 of the consolidated drill sites within the City. That agreement also required TOP Operating to plug and abandon all of its existing wells located within City limits, and prohibited TOP Operating and Cub Creek from all future surface oil and gas operations within City limits. At that time, the City also agreed to lease an additional approximately 516 acres of its mineral rights to Cub Creek. In exchange for TOP Operating's commitment to relinquish all of its current and future rights for oil and gas development in the City, the City agreed to pay TOP Operating \$3,000,000. This payment would be from funds derived solely from oil and gas royalty payments paid to the City by Top Operating and Cub Creek under the Master Contract and Site Relinquishment Agreement.

Following the execution of the Site Relinquishment Agreement, Cub Creek proceeded to drill and complete wells at two locations outside the City, known as the Olander and Knight pads. TOP Operating also moved forward to plug and abandon all of their existing wells within City limits. The plugging and abandonment work has been completed on all wells; however, final site restoration and reclamation is ongoing under the direction of the Colorado Oil and Gas Conservation Commission (COGCC). City staff have continuously monitored and commented on the site restoration and reclamation process.

In conjunction with the new oil and gas development and ongoing City Council direction to protect the community from potential impacts from oil and gas operations occurring outside Longmont, the City initiated one of the most stringent and comprehensive environmental monitoring programs in the state that includes all existing oil and gas operations both within and near the City. The City has developed and implemented two regional air quality monitoring sites, along with continued water quality testing in the vicinity of existing wells as well as Union Reservoir. City staff have made several presentations to City Council and the community regarding the results of the environmental monitoring programs, and will continue to keep a vigilant eye on these oil and gas activities with the clear goal to protect the public health of the community.

Most recently, the City became aware of the Weld County District Court decision in *Willis v. Top Operating* (2019 CV 31080) which resulted in City staff conducting a review of its mineral interests in the area around Union Reservoir. This review led to negotiations with Cub Creek and TOP Operating to restructure certain terms of the Master Contract and Site Relinquishment Agreement. The outcome of that negotiation is reflected in the attached Amendment.

As part of the Amendment is a new agreement with TOP Operating, which aligns with COGCC Rule 1001, regarding the topsoil protection and reclamation of City owned properties

immediately in the vicinity of plugged and abandoned oil and gas wells. In this agreement, the City agrees to complete the final top soil protection and surface reclamation of the City owned properties because the City is confident that City staff is better trained and equipped to ensure final surface reclamation is done right. Staff estimates this work will cost less than \$20,000, which will be paid for by oil and gas revenues. This agreement is subject to the final regulatory authority of the COGCC, and is limited to top soil protection and surface reclamation only. All of the well sites have been properly plugged and abandoned in accordance with the COGCC rules and regulations. The City is also not assuming any responsibility or liability regarding that process and the long-term status of the wells. That responsibility continues to lay with the oil and gas operator. The City will continue to monitor ground water in the vicinity of each of the plugged and abandoned wells.

City Council's consideration of—and potential action on—the Amendment continues to build upon and support City Council's long-standing direction to eliminate all oil and gas surface operations in the City, while also providing the City with current and competitive mineral leases. The Amendment is intended to achieve that goal. Please refer to the attached map depicting each of the items described below. The key elements of the Amendment and its Exhibits are as follows:

- The elimination of the City's obligation to pay \$ 3 million to TOP Operating.
- The replacement of existing leases for the City's Upper Adrian, Eckel, and Kolby mineral rights with new leases which will increase royalty rates to 20% and include prevailing, modern terms and conditions to better protect City resources.
- The amendment of the Koester and Upper Shores lease agreements to extend the term of the leases, consistent with the City's Charter, to 30 years ending in 2042 and an increase of the royalty rate paid to the City from 16 to 17%.
- Each of the above leases continues to prohibit any surface activities on properties owned by, or located within, the City.
- The ratification of the City's Stamp mineral lease.
- A new agreement with TOP Operating, in accordance with COGCC rule 1001, regarding the topsoil protection and reclamation of City-owned properties immediately in the vicinity of plugged and abandoned oil and gas wells.
- An extension of the term of the Access Road Revocable Permit and Agreement granted to Cub Creek, consistent with the City's Charter, to 30 years ending in 2048.
- The estimated additional revenue to the City in 2022 is \$3.53M, and over the life of the Knight wells is \$4.78M.

ATTACHMENTS:

Att 1 - Ordinance Approving the Amendment to the Existing Oil & Gas Agreements and Mutual Release

Att 2 – Amendment to Existing OG Agreements

CITY COUNCIL COMMUNICATION



Att 3 - Vicinity Map depicting the leased properties and Knight Drill Spacing Unit

Att 4 - 2012 Master Contract and Operator's Agreement

Att 5 - 2018 Site Relinquishment Agreement