

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: August 1, 2023
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Anthony R. Dekeyzer, Director of Mass Transit, (915) 212-3306
K. Nicole Cote, Managing Director (915) 212-1092

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 7 – Enhance and Sustain El Paso's Infrastructure Network

SUBGOAL: 7.3 – Enhance regional comprehensive transportation system

SUBJECT:

Discussion and action on the request that the Chairman be authorized to sign an Interlocal Agreement with the Texas General Land Office ("GLO") pursuant to Section 791.011(b)(1) of the Texas Government Code under which the GLO will provide the City with natural gas (CNG) at an indexed gas price as published each month in the Platts Gas Daily price guide report plus a market demand factor of \$0.80 per MMBtu. The Agreement shall be effective on August 1, 2023 and shall remain in effect for an initial term of two (2) year with one (1) one (1) year option to extend. The option to extend shall be extended solely by mutual written agreement, subject to requisite funding appropriated by the Texas Legislature for the Texas General Land Office ("GLO") and the City. Updated pricing for options to extend will be provided by the Texas General Land Office ("GLO") per Exhibit A and Exhibit B.

BACKGROUND / DISCUSSION:

This contract facilitates the purchase and delivery of Compressed Natural Gas (CNG) through pipelines, presenting a significant shift from traditional tractor-trailer transportation. By embracing this new approach, it not only enhances economic efficiency but also prioritizes the overall safety aspect. The utilization of pipeline infrastructure ensures a streamlined and reliable supply chain for CNG, which is an essential fuel source for powering the Sun Metro bus fleet.

SELECTION SUMMARY:

N/A

CONTRACT VARIANCE:

The difference based in comparison to the previous contract is as follows: An increase of \$1,320,000.00 for the initial term, which represents a 17.19% increase due to an increase in price of Compressed Natural Gas and an increase in gas consumption per month.

PROTEST

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$9,000,000.00

Funding Source: Sun Metro Operating Fund

Account: 560-3200-530020-60010-P6006

560-3200-530020-60020-P6008

2023-0067 CNG Purchase and Delivery

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Mass Transit (Sun Metro)

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

 *Anthony R. Dekeyzer* 6/20/2023

Anthony R. Dekeyzer, Director of Mass Transit

**COUNCIL PROJECT FORM
(Agreement)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **REGULAR** agenda for the Mass Transit Board Meeting of **August 1, 2023**.

STRATEGIC GOAL: No. 7 – Enhance and Sustain El Paso’s Infrastructure Network

The linkage to the Strategic Plan is subsection 7.3 – Enhance regional comprehensive transportation system.

Award Summary

Discussion and action on the request that the Chairman be authorized to sign an Interlocal Agreement with the Texas General Land Office ("GLO") pursuant to Section 791.011(b)(1) of the Texas Government Code under which the GLO will provide the City with natural gas (CNG) at an indexed gas price as published each month in the Platts Gas Daily price guide report plus a market demand factor of \$0.80 per MMBtu. The Agreement shall be effective on August 1, 2023 and shall remain in effect for a term of two (2) years with one (1) one (1) year option to extend. The option to extend shall be extended solely by mutual written agreement, subject to requisite funding appropriated by the Texas Legislature for the Texas General Land Office ("GLO") and the City. Updated pricing for option to extend will be provided by the Texas General Land Office ("GLO") per Exhibit A and Exhibit B.

Contract Variance

The difference based in comparison to the previous contract is as follows: An increase of \$1,320,000.00 for the initial term, which represents a 17.19% increase due to an increase in price of Compressed Natural Gas and an increase in gas consumption per month.

| | |
|--------------------------|---|
| Department: | Mass Transit (Sun Metro) |
| Award to: | Texas General Land Office Austin, TX |
| Initial Term: | 2 Years |
| Option to Extend: | 1 Year |
| Annual Estimated Amount: | \$3,000,000.00 |
| Total Estimated Amount: | \$9,000,000.00 (3 years) |
| Account No.: | 560-3200-530020-P6006 |
| Funding Source: | Sun Metro Operating Fund |
| District(s): | All |

This is a Service Agreement.

Interlocal Agreement with the Texas General Land Office ("GLO") pursuant to Section 791.011(b)(1) of the Texas Government Code.

In addition, it is requested that the City Attorney’s Office review and that the City Manager be authorize to execute and related contract documents and agreements necessary to effectuate this award. In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

*******ADDITIONAL INFO BELOW*******

RESOLUTION

WHEREAS, the Sun Metro Department requires natural gas ("CNG") to use as fuel for the City of El Paso's CNG bus fleet; and

WHEREAS, the City of El Paso ("City") has determined that the Texas General Land Office ("GLO") is qualified to supply the City with CNG; and

WHEREAS, the GLO is willing to supply CNG to the City; and

WHEREAS, the Texas Interlocal Cooperation Act of the Texas Government Code, §§ 791.001, et seq., allows local governments and political subdivisions of the state to contract among each other for governmental functions and services; and

WHEREAS, the City and the GLO desire to enter into an Interlocal Agreement for the City to purchase CNG from the GLO.

NOW, THEREFORE, BE IT RESOLVED BY THE MASS TRANSIT DEPARTMENT BOARD OF THE CITY OF EL PASO:

That the Chairman be authorized to sign an Interlocal Agreement with the Texas General Land Office ("GLO") pursuant to Section 791.011(b)(1) of the Texas Government Code under which the GLO will provide the City with natural gas (CNG) at an indexed gas price as published each month in the Platts Gas Daily price guide report plus a market demand factor of \$0.80 per MMBtu. The Agreement shall be effective on August 1, 2023 and shall remain in effect for a term of two (2) years with one (1) one (1) year option to extend. The option to extend shall be extended solely by mutual written agreement, subject to requisite funding appropriated by the Texas Legislature for the Texas General Land Office ("GLO") and the City. Updated pricing for option to extend will be provided by the Texas General Land Office ("GLO") per Exhibit A and Exhibit B.

APPROVED this _____ day of _____, 2023.

THE CITY OF EL PASO:

Oscar Lesser
Chairman

ATTEST:

Laura D. Prine
Secretary

APPROVED AS TO FORM:

Russell Abeln

Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:

K. Nicole Cote

K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:

Anthony R. DeKeyzer

Anthony R. DeKeyzer, Director Mass Transit

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INTERLOCAL COOPERATION CONTRACT GLO CONTRACT NO. 23-151-000-E054

This Interlocal Cooperation Contract (the “Contract”) is entered into by and between the Texas General Land Office (“GLO”) and City of El Paso, a Texas municipal corporation by and through the Mass Transit Department Board, Vendor ID #74-6000749 (Receiving Agency), pursuant to the authority granted by and in compliance with the provisions of the “Interlocal Cooperation Act,” Chapter 791 of the Texas Government Code.

I. TERM AND AMOUNT OF CONTRACT

1.01 **Term:** This Contract shall be effective for a Primary Term of August 1, 2023 through July 31, 2025 with one (1) one-year option to extend as mutually agreed in writing by the Parties through the formal amendment process.

HOWEVER, the Contract shall be extended for each subsequent biennium if the requisite funding is appropriated by the Texas Legislature for the GLO and Receiving Agency for such biennium.

1.02 For and in consideration of the GLO’s satisfactory performance under this Contract, which requires the delivery of an undeterminable quantity of natural gas, Receiving Agency shall pay to the GLO, on a unit basis, the amount specified by the terms of this Contract.

II. DEFINITIONS

2.01 **Certain Defined Terms:** Unless the context clearly requires otherwise, the capitalized terms defined below have the following meanings:

“**Btu**” means one (1) British thermal unit.

“**Contract Maintenance Fee**” means the fee the GLO charges per MMBtu delivered in accordance with 31 Texas Administrative Code §3.31.

“**Early Termination Damages**” means the difference between (a) the Fixed Gas Price times the Fixed Gas Volume(s) remaining to be supplied or purchased under this Contract, plus the Index Gas Price times the Index Gas Volume(s) remaining to be supplied or purchased under this Contract and (b) the Market Value of the Fixed Gas Volume(s) and Index Gas Volume(s) remaining to be supplied or purchased under similar circumstances under this Contract.

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“Early Termination Date” means the date the Party authorized to do so establishes as the date the Contract terminates upon an Event of Default or the date of written termination notification by either Party that occurs prior to the termination date contemplated under Section 1.01. An Early Termination Date established under Sections 6.02 and 6.03 must be on the first day of a month.

“Event of Default” means the failure of a Party to perform any material term or condition of the Contract, provided that such failure is not caused by Force Majeure.

“Fixed Gas Price” means the predetermined price of natural gas per MMBtu recorded on Exhibit A.

“Fixed Gas Volume(s)” means the volume(s) of natural gas designated by Receiving Agency on Exhibit B to be priced at the Fixed Gas Price.

“Force Majeure” means the occurrence of any of the following for the period of time, if any, that the performance by either or both Parties’ material obligations under this Contract are actually, materially, or reasonably delayed or prevented thereby: the enactment, imposition, or modification of any applicable law which occurs after the effective date of this Contract; governmental actions, whether federal, state, military or local, or any application of governmental conservation or curtailment rules or regulations; transportation or natural gas supplier strikes, lockouts, or other industrial disturbances; acts of God, terrorism, wars, blockades, insurrections, riots, civil disturbances, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, wash-outs, explosions, nuclear reaction, radiation, or radioactive contamination; accidents to machinery or lines of pipe; production of lines of pipe; imposed, scheduled or unscheduled shutdowns or curtailments of lines of pipe for inspection, testing, maintenance, or repair; or any other occurrence, whether of the kind herein enumerated or otherwise, which is not reasonably within the control of the Party claiming the right to delay performance on account of such occurrence and which is not a result of the negligence, willful misconduct, or actions under the control of, the Party claiming the right to delay performance on account of such occurrence. Force Majeure does not include fluctuations in the market price for natural gas or System Operating Expenses.

“Full Requirements” means Receiving Agency’s total natural gas requirements to be used only for operations, which includes providing gas to Receiving Agency’s tenants, if any, at the facilities identified in Exhibit A.

“Gas Daily Price” means the midpoint price stated in the *Platts Daily Price Guide* or successor publication for the applicable Index Gas Price as referenced in Exhibit A.

“Imbalance Costs” means all costs, including mitigation costs, incurred by the GLO for Imbalance Gas, resulting from the GLO’s use of information in Exhibit B or any subsequent amendment(s) thereto.

“Imbalance Gas” means the difference between a Transporter’s receipts and deliveries of natural gas for the complete transportation path of the gas to the Points of Delivery.

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“**Index Price**” means the price posting as first published each month in *Platts Gas Daily* price guide in the section titled “Market Centers,” under the heading and subheading specified in Exhibit A, or in the event such publication is unavailable, a price agreed to by the GLO and Receiving Agency.

“**Index Gas Price**” means Index Price plus Market Demand Factor.

“**Index Gas Volume(s)**” means the volume(s) of natural gas designated by Receiving Agency in Exhibit B to be priced at the Index Gas Price, including any amount of natural gas supplied pursuant to Section 4.04.

“**LDC**” means a local distribution company.

“**Market Demand Factor**” means an adjustment to the Index Price, as determined by the GLO, to account for market factors, including but not limited to, supply, transportation and imbalance management and aggregation services performed by the GLO.

“**Market Value**” means any or all of the settlement prices of NYMEX natural gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchase and any other bona fide third-party offers, all adjusted for the length of term and transportation costs to the Points of Delivery recorded in Exhibit A.

“**MMBtu**” means one million (1,000,000) Btu’s.

“**Monthly Gas Consumption Form**” means the form attached hereto as Exhibit B that Receiving Agency shall submit to the GLO wherein Receiving Agency designates its Monthly Scheduled Quantity.

“**Monthly Invoice(s)**” means invoice(s) generated by the GLO for the delivery of natural gas, the balance forward from the preceding billing month and payments received during the current billing month setting out the total amount due by Receiving Agency for the time periods specified therein.

“**Monthly Scheduled Quantity**” means the total volume(s) of natural gas consumption per month in MMBtu Receiving Agency reported on the most recent Exhibit B, filed in accordance with Section 3.03, and which is the amount of natural gas the GLO will schedule for delivery to Receiving Agency for the designated period(s). If no current Exhibit B from Receiving Agency is on file at the GLO or, if one is filed that does not contain schedules of volume(s) of natural gas consumption for a specific time period, the GLO will, in its sole discretion, schedule the volume(s) of natural gas to supply to Receiving Agency for that period.

“**NYMEX**” means the New York Mercantile Exchange.

“**Party**” or “**Parties**” means the GLO or Receiving Agency individually or collectively as use of the term implies.

“**Points of Delivery**” means the delivery meter(s) more specifically identified in Exhibit A.

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“Prior Period Adjustment” means any adjustments, including but not limited to, actual delivered natural gas volumes, meter reading errors, or any other factor(s) which may affect the resulting actual cost of delivered natural gas supplies and other services made to any previous Monthly Invoice resulting in the actual cost to Receiving Agency.

“Swing Gas Price” means the price posting as published each day in *Platts Gas Daily* price guide in the section titled “Daily Price Survey,” under the heading and subheading specified in Exhibit A, or in the event such publication is unavailable, a price agreed to by the GLO and Receiving Agency.

“Swing Gas Volume(s)” means the volume(s) of natural gas both purchased and sold during the month, to be priced at the appropriate Swing Gas Price.

“System Operating Expense(s)” means the cost incurred by the GLO to supply volume(s) of natural gas to the Points of Delivery identified in Exhibit A, and includes but is not limited to, transportation charges, park-and-loan charges, cash outs, fuel charges, meter or metering charges, fees and taxes, including all Imbalance Costs actually incurred or reasonably allocated by the GLO before or after the Points of Delivery. The System Operating Expense(s) may be modified by the GLO to reflect any actual cost increases or decreases to the various cost components comprising the System Operating Expense(s).

“Telemetry Recovery Charges” means actual telemetry costs, if any, incurred by the GLO. Receiving Agency has the option prior to the initial month of flow to notify the GLO in writing that it desires to prorate the actual telemetry costs plus 4% annual interest over a term not to exceed the last month noted on Exhibit B. These charges will be calculated as follows: (actual telemetry costs plus (actual telemetry costs multiplied by (4% multiplied by the desired months of proration divided by 12))) divided by the desired months of proration to determine the monthly recovery charge billed.

“Transporter” means the pipeline company(s) transporting natural gas for the GLO.

III. STATEMENT OF SERVICES TO BE PERFORMED

3.01 Provision of Natural Gas: The GLO agrees to sell and Receiving Agency agrees to buy Receiving Agency’s Full Requirements of natural gas on the terms and conditions set forth herein. If this Contract is extended into a new biennium pursuant to Section 1.01, the GLO and Receiving Agency shall, by written agreement, amend Exhibits A and B, otherwise the GLO will, in its sole discretion, schedule the volume(s) of natural gas to supply to Receiving Agency for that period.

3.02 Use of Natural Gas: Receiving Agency agrees that the natural gas purchased under the terms and conditions of this Contract shall be used only for the operational needs of the facilities, which includes providing gas to Receiving Agency’s tenants, if any, identified in Exhibit A and may not be resold for any purpose or use whatsoever.

3.03 Monthly Gas Consumption Form: Upon execution of the Contract and annually thereafter, or from time to time as changed conditions require, Receiving Agency shall complete

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and submit to the GLO a Monthly Gas Consumption Form in accordance with 31 Tex. Admin. Code §8.8.

3.04 Fixed Gas Volume(s): The Parties will execute an Exhibit A for purposes of locking in a Fixed Gas Price for the duration of time designated in Exhibit A and will execute an Exhibit B to designate the monthly volume of natural gas to be purchased at the Fixed Gas Price. Exhibits A and B shall be amended in accordance with Section 3.10.

3.05 Future Month Quantity Amendments: In accordance with Section 3.10, volume(s) of natural gas designated to be purchased at the Index Gas Price on the most recent Exhibit B may be amended by execution of Exhibit C (Confirmation Of Amendments to Scheduled Gas Volumes) and attaching a revised Exhibit B at any time no less than two (2) weeks prior to the month for which the change is to be effective. The amended Exhibit B volume(s) shall not be effective until the GLO acknowledges its approval in writing.

3.06 Intra-Month Quantity Amendments: In order to mitigate the inevitable discrepancies between scheduled volume(s) and actual consumption of natural gas designated as Index Gas Price the Parties agree that Receiving Agency may amend its scheduled volume(s) at any mutually agreeable time by execution of Exhibit C. The execution of Exhibit C will have the effect of amending Exhibit B; **however, intra-month amended Exhibit B volume(s) are not binding on the GLO.** The GLO will make commercially reasonable attempts to effectuate intra-month schedule amendments, but makes no guarantee that they can be implemented or that avoidance of Imbalance Costs can be achieved.

3.07 Imbalance Costs: Receiving Agency shall bear all Imbalance Costs.

3.08 Transportation Agreements: Receiving Agency, if necessary, shall enter into separate agreements to transport through the LDC the volume(s) of natural gas received under this Contract. Receiving Agency is directly and independently responsible to such LDC for all transportation costs to the Points of Delivery at Receiving Agency's facilities identified in Exhibit A.

3.09 Title to Gas: Title to the natural gas, its control and possession, risk of loss, and liability for damages and injuries, shall pass to Receiving Agency upon delivery of the natural gas to the Points of Delivery at Receiving Agency's facilities identified in Exhibit A.

3.10 Exhibit Amendments: Exhibits A, B and C of this Contract may be amended through the mutual agreement of the Parties by the execution of new exhibits signed and dated by both Parties. Receiving Agency hereby expressly grants authority to Managing Director of Purchasing and Strategic Sourcing Department or Designee to execute amendments to Exhibits A, B and C.

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IV. BILLING AND STATEMENT OF CHARGES

4.01 **Billing:** The GLO shall bill Receiving Agency via Monthly Invoices that shall be delivered via the United States Postal Service, electronic mail, or facsimile at the GLO's option to Receiving Agency on or before the last working day of the month following the month of delivery.

4.02 **Invoicing:** The Monthly Invoices indicate the total sum of:

- (i) Fixed Gas Volume(s) times the Fixed Gas Price, **WHETHER OR NOT SUCH QUANTITY IS ACTUALLY TAKEN BY RECEIVING AGENCY DURING THE MONTH**, plus
- (ii) the product of the month's actual Index Gas Volume(s) supplied multiplied by the Index Gas Price, plus
- (iii) the Contract Maintenance Fee, plus
- (iv) System Operating Expenses, plus
- (v) Telemetry Recovery Charges, plus
- (vi) any charges incurred under Sections 4.04, 4.05 or 4.06.

4.03 **Default Gas Pricing:** For any month during the term of this Contract for which Exhibit A pricing is not in effect, all natural gas supplied to Receiving Agency will be sold per MMBtu at a price equal to the total sum of: the greater of (i) the first of the month Index Price for the month of flow times 120% or (ii) the average of the Gas Daily Price relative to the referenced Index Price for the month of flow times 120%, plus (a) the Contract Maintenance Fee, and (b) the System Operating Expenses.

4.04 **Excess Usage Pricing:** If the Index Gas Volume(s) of natural gas received by Receiving Agency exceeds the Monthly Scheduled Quantity of Index Gas Price gas, such excess will be priced as follows:

- (i) if the Transporter utilizes a cash out provision, the actual excess quantity used times the Transporter's cash out contract price plus the associated transportation charges; or
- (ii) if the Transporter does not utilize a cash out provision and the natural gas received by Receiving Agency exceeds 105% of the Monthly Scheduled Quantity of Index Gas Volume(s), all volume of natural gas exceeding 100% of the Monthly Scheduled Quantity will be priced at the greater of (a) the first of the month Index Price for the month of flow times 120% or (b) the average of the Gas Daily Price relative to the referenced Index Price for the month of flow times 120%.

4.05 **Shortfall Usage Pricing:** If Receiving Agency does not accept delivery of the Monthly Scheduled Quantity of Index Gas Volume(s), Receiving Agency shall pay the GLO as follows:

- (i) if the Transporter utilizes a cash out provision, the quantity of natural gas not accepted times the positive difference between the Index Gas Price for that particular quantity of natural gas minus the cash out price the Transporter paid the GLO for the Monthly Scheduled Quantity not accepted plus associated transportation charges; or

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- (ii) if the Transporter does not utilize a cash out provision and Receiving Agency does not accept delivery of at least 95% of the Monthly Scheduled Quantity of Index Gas Volume(s), the positive difference between the Index Gas Price for that quantity of natural gas not accepted less the lesser of (a) 80% of the first of month Index Price for the month of flow times the quantity of natural gas not accepted or (b) 80% of the average of the Gas Daily Price for the referenced index for the month of flow times the quantity of natural gas not accepted, plus (c) the actual transportation cost for all scheduled volume(s). For the purposes of subsection (i) and (ii), the phrase “quantity of natural gas not accepted” means the difference in the volume(s) of gas listed on the most recently filed or amended Exhibit B or Exhibit C and the gas actually accepted for the applicable time periods.

4.06 Special Aggregation Provision: For the calculations contemplated by subsections (ii) of sections 4.04 and 4.05, the GLO will aggregate the Monthly Scheduled Quantity of Index Gas Volume(s) for Receiving Agency and other gas customers of the GLO whose Points of Delivery are located in areas where the LDC creates or allows a pool (together, the “Receiving Agencies”), and aggregate the natural gas index volumes actually accepted by the pooled Receiving Agencies at the locations provided for in their respective contracts. Any imbalance fee imposed by the GLO will be apportioned among those Receiving Agencies based upon their pro rata contribution to any resulting imbalance. However, in no event will the imbalance fee under this section exceed the imbalance fee for Receiving Agency on a stand-alone basis. The aggregation provided for in this special provision shall apply to each LDC, provided that the LDC provides an aggregation benefit for gas customers.

V. PAYMENT FOR SERVICES

5.01 Payment Methods and Due Date: Payments by check or electronic fund transfer, unless otherwise agreed, are the only acceptable methods of payment. Payment is due no later than ten (10) calendar days from date of receipt of the Statement of Charges for all undisputed charges. If the invoiced Party disputes the amount of any such Statement of Charges, such invoiced Party shall, within five (5) days of the payment due date, provide supporting documentation to support the amount disputed. In the event the Parties are unable to resolve such dispute, either Party may pursue any remedy available to enforce its rights pursuant to this Contract. Payment upon receipt of the Statement of Charges after a reasonable process period is encouraged, as the GLO must pay for purchased natural gas by the 25th of the month following the month of delivery.

VI. DEFAULT AND TERMINATION

6.01 Early Termination: Subject to payment of Early Termination Damages, either Party may terminate this Contract early by giving at least thirty (30) days written notice to the other Party.

6.02 Early Termination Date: The terminating Party may establish the Early Termination Date. The non-terminating Party shall thereafter determine any Early Termination Damages in a commercially reasonable manner.

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6.03 Event of Default Early Termination Date: The non-defaulting Party may establish the Early Termination Date. The non-defaulting Party shall thereafter determine any Early Termination Damages in a commercially reasonable manner.

6.04 Non-Performance due to Force Majeure: Any delays in or failure of performance by either Party, except in respect of the obligation of payments under this Contract, due to Force Majeure shall not constitute an Event of Default. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall, to the extent practical, exercise due diligence to prevent, eliminate or overcome such Force Majeure event and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, either Party may terminate this Contract immediately upon written notification to the other Party. Upon such termination, the terminating Party shall be responsible for Early Termination Damages, which shall be due and payable in accordance with Section 6.05.

6.05 Early Termination Damages Payment Obligation and Due Date: Early Termination Damages and all previously incurred charges pursuant to this Contract are due and payable to the non-defaulting or non-terminating Party upon early termination or default. Early Termination Damages are due and payable thirty (30) days after the non-terminating or non-defaulting Party invoices the other Party.

VII. MISCELLANEOUS PROVISIONS

7.01 Assignment: Either Party may assign this Contract upon written notice and prior approval of the other Party. Such approval shall not be unreasonably refused.

7.02 Entire Agreement: This Contract constitutes the entire agreement of the Parties. No other agreement, statement, or promise that is not contained in this Contract shall be binding except by a subsequent written modification signed by both Parties. The foregoing notwithstanding, the Parties may change non-substantive terms, including but not limited to names, addresses and account numbers, without the approval of the other Party. The Party making the non-substantive change shall provide the other Party written notice of the change within five (5) days of the change.

7.03 Compliance with Other Laws: Incorporated by reference, the same as if specifically written herein, are the rules, regulations, and all other requirements imposed by law, including but not limited to compliance with those pertinent rules and regulations of the State of Texas and those of federal agencies providing funds to the State of Texas, all of which shall apply to the performance of the Parties hereunder.

7.04 Dispute Resolution: The Parties agree to use good faith efforts to decide all questions, difficulties or disputes of any nature that may arise under or by this Contract. The dispute resolution processes in Texas Government Code Chapters 2009 and 2260 must, to the extent applicable to this Contract, be used to resolve any dispute arising under this Contract, other than a dispute regarding an invoiced amount; provided, however, that nothing in this paragraph shall preclude either Party

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from pursuing any remedies as may be available under Texas state law. All disputes arising out of alleged errors in the Monthly Invoice shall be addressed in accordance with §771.008, Texas Government Code. This provision shall not apply to any matter with respect to which the GLO or Receiving Agency may make a decision within its sole and complete discretion.

7.05 Venue: Venue of any suit brought for breach of this Contract is fixed in any court of competent jurisdiction in Travis County, Texas; provided, however, the foregoing shall not be construed as a waiver of sovereign immunity by the GLO or governmental immunity by Receiving Agency.

7.06 Termination for Non-Appropriation: This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or the GLO or Receiving Agency in violation of Tex. Const. art. III §49. In compliance with Tex. Const. art. VIII §6, it is understood that all obligations of the GLO and Receiving Agency are subject to the availability of funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

7.07 Severability: Should any one or more provisions of this Contract be held to be void, voidable, or for any reason whatsoever of no force and effect, such provision(s) shall be construed as severable from the remainder of this Contract and shall not affect the validity of all other provisions of this Contract, which shall remain of full force and effect; so long as such severance does not deprive either Party of the benefit of the bargain.

7.08 Execution: This Contract shall be executed in multiple originals and/or several counterparts, each of which shall constitute an original. A complete set of said counterparts, when taken together, shall constitute a single instrument.

7.09 Pipeline Integrity Testing: During the term of this Contract, if any pipeline used to transport natural gas to Receiving Agency ceases or interrupts regular operation, to include, but not limited to, inspection, maintenance, testing or repair, as a result of governmental action, order, rule or regulation, any resulting additional costs involved in delivering or providing natural gas under this Contract shall be borne entirely by Receiving Agency. In such instance the GLO will assist Receiving Agency in mitigating such additional costs by any operational means reasonably available to the GLO.

7.10 Exhibits: Exhibit A, Exhibit B, Exhibit C and the Limited Agency Authorization attached hereto, and any subsequent amendments thereto, are incorporated by reference into this Contract.

7.11 Continued Obligations: Notwithstanding any other provision herein to the contrary, Receiving Agency shall not be relieved of its obligation to make payments due to the GLO for natural gas actually supplied or tendered for delivery to the Points of Delivery set out in Exhibit A and any related expenses or liabilities incurred by the GLO in the performance of this Contract, except that the GLO and Receiving Agency agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions.

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7.12 **Confidentiality:** The contents of this Contract and any information related to it are confidential, may be excepted from disclosure and may not be released without the authorization of the General Land Office, a ruling from the Office of the Attorney General or an order from a court to do so. Any request for disclosure of the contents of this Contract or any information related to it must be submitted to the Office of the Attorney General in accordance with Section 552.301 of the Texas Government Code. The General Land Office must be notified of the request in accordance with Section 552.305 of the Texas Government Code.

VIII. CONTACT INFORMATION

Texas General Land Office
Texas General Land Office
1700 North Congress, Room 840
Austin, TX 78701
512/463-5042 Energy Resources
512/475-1404 Fax

City of El Paso
Mass Transit Department (Sun Metro)
10151 Montana Ave
El Paso, TX, 79925

For Notices
Attn: Caesare Peterson
512/475-1462
caesare.peterson@glo.texas.gov

For Notices
Attn: Anthony Dekeyzer
10151 Montana Ave, El Paso, TX 79925
DekeyzerAR@elpasotexas.gov

For Scheduling
Attn: Kevin Wallace
512/936-2771
kevin.wallace@glo.texas.gov

For Scheduling
Attn: Carlos Becerra
(915) 212-3414
BecerraCX2@elpasotexas.gov

For Payment by ACH with Addenda
Bank of America
Austin, TX
ABA #111000025 – Acct #6040070607
Details: GLO/Energy Gas

For Invoices
Attn: Carlos Becerra
(915) 212-3414
10151 Montana Ave, El Paso, TX 79925
BecerraCX2@elpasotexas.gov

For Payment By Wire
ABA # 114900164
Acct # 463600305

For Payment By Check
Texas General Land Office
Attn: SEMP
P.O. Box 12873
Austin, TX 78711-2873

THIS AGREEMENT IS CONFIDENTIAL AND MAY BE EXEMPT FROM DISCLOSURE UNDER THE PUBLIC INFORMATION ACT: DO NOT DISCLOSE ANY PROVISION HEREIN WITHOUT FIRST CONTACTING THE GENERAL LAND OFFICE

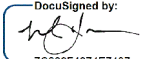
THE UNDERSIGNED do hereby certify that: (1) the services specified above are necessary and essential and are properly within the statutory functions and programs of the affected agencies of state government; (2) the proposed arrangements serve the interest of efficient and economical administration of those agencies; and (3) the services, supplies or materials contracted for are not required by §21 of Article 16 of the Constitution of Texas to be supplied under contract to the lowest responsible bidder.

RECEIVING AGENCY further certifies that it has the authority to enter into this Contract by virtue of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

THE GLO further certifies that it has the authority to enter into this Contract by virtue of the authority granted in §52.133, Tex. Nat. Res. Code and the applicable Texas Appropriations Act.

TEXAS GENERAL LAND OFFICE

RECEIVING AGENCY

DocuSigned by:

7C289F4374E7497...
Mark A. Havens
Chief Clerk/Deputy Land Commissioner

Oscar Lesser
Chairman

Date of execution: 6/22/2023

Date of execution: _____

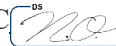


OGC  ir  DepDir 

Exhibit A

GLO CONTRACT NUMBER: 23-151-000-E054

EFFECTIVE DATE OF CONTRACT: AUGUST 1, 2023

EFFECTIVE DATE OF EXHIBIT A: AUGUST 1, 2023

AGENCY NAME: CITY OF EL PASO

AGENCY LOCATION: EL PASO, TEXAS

POINT OF DELIVERY: TEXAS GAS SERVICE METERS

FIXED GAS PRICE: N/A

INDEX GAS PRICE: Effective August 1, 2023, an Index Gas Price equal to the Index Price posting as first published each month in Platts Gas Daily Price Guide report in section titled "Monthly Bidweek Spot Gas Prices" under the heading "Southwest" and under the subheading "NGI SoCal Border" plus a Market Demand Factor of \$0.80 per MMBtu.

SWING GAS PRICE: For physical volumes delivered that are not priced under Fixed Gas Price or Index Gas Price, all volumes purchased in excess of the Fixed Gas Price and Index Gas Price volumes nominated at the first of the month for the delivery months will be the average price of the Platt's Gas Daily price under the heading "Southwest" and under the subheading "El Paso, South Mainline" plus a Market Demand Factor of \$0.25 per MMBtu. Any shortfall volumes sold for the delivery months, shall be credited at the monthly average price of the Gas Daily "El Paso, South Mainline" index as published in the Platts Gas Daily, Final Daily Price Survey minus \$.10 per MMBtu.

SYSTEM OPERATING EXPENSE(S): Shall mean the cost incurred by the GLO to supply volume(s) of natural gas to the Points of Delivery identified in Exhibit A, and includes but is not limited to, tariff and telemetry charges, transportation charges, park-and-loan

charges, cash outs, fuel charges, meter or metering charges, fees and taxes, including all Imbalance Costs actually incurred or reasonably allocated by the GLO before or after the Points of Delivery. The System Operating Expense(s) may be modified by the GLO to reflect any actual cost increases or decreases to the various cost components comprising the System Operating Expense(s).

EXCESS USAGE PRICING:

As the Transporter does not utilize a cash out provision and the natural gas received by the Receiving Agency exceeds 105% of the Monthly Scheduled Quantity of Index Gas Volume(s), all volume of natural gas exceeding 100% of the Monthly Scheduled Quantity will be priced at the greater of (a) the first of the month Index Price for the month of flow times 120% or (b) the average of the Gas Daily Price relative to the referenced Index Price for the month of flow times 120%.

SHORTFALL USAGE PRICING:

As the Transporter does not utilize a cash out provision and the Receiving Agency does not accept delivery of at least 95% of the Monthly Scheduled Quantity of Index Gas Volume(s), the positive difference between the Index Gas Price for that quantity of natural gas not accepted less the lesser of (a) 80% of the first of month Index Price for the month of flow times the quantity of natural gas not accepted or (b) 80% of the average of the Gas Daily Price for the referenced index for the month of flow times the quantity of natural gas not accepted, plus (c) the actual transportation cost for all scheduled volume(s). For the purposes of subsection (i) and (ii), the phrase "quantity of natural gas not accepted" shall mean the difference in the volume(s) of gas listed on the most recently filed or amended Exhibit B and the gas actually accepted for the applicable time periods.

LDC CHARGES:

Reimbursement for all Transporter tariff charges inclusive of Transport tariff fuel requirements. Regardless of any statement to

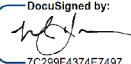
the contrary in this document, the Contract, any attachment, or any other document, the GLO shall not charge, and the Receiving Agency shall not be liable for, any fees, penalties, costs (including but not limited to costs of purchased or borrowed gas), or charges (in cash or in kind) assessed by any utility or transporter for failure to satisfy balance and/or nomination requirements or any other charges (in cash or in kind)

CONTRACT MAINTENANCE FEE: \$0.03 per MMBtu

AUTHORIZED BY: CITY OF EL PASO:

Oscar Lesser
Chairman
DATE: _____

TEXAS GENERAL LAND OFFICE

DocuSigned by:

7C289F4374E7497...

Mark A. Havens
Chief Clerk/Deputy Land Commissioner
DATE: 6/22/2023

EXHIBIT B
MONTHLY GAS CONSUMPTION ELECTION (MGCE)
CONTRACT #23-151-000-E054

AGENCY: CITY OF EL PASO

FACILITY NAME: Sun Metro Mass Transit, TOC (Montana Ave) & Fred Wilson Stations

ADDRESS: 10159 Montana, El Paso, TX 79925

CONTACT NAME: Mr. Anthony Dekeyzer

CONTACT PHONE NUMBER: 915-212-3306

EMAIL ADDRESS: DekeyzerAR@elpasotexas.gov

Gas Consumption Per Month in MMBtu

TERM: August 1, 2023 through July 31, 2025

| | <u>Fixed</u> | <u>Index</u> | <u>Total</u> |
|--------|--------------|--------------|--------------|
| Aug-23 | 0 | 28,239 | 28,239 |
| Sep-23 | 0 | 25,651 | 25,651 |
| Oct-23 | 0 | 24,743 | 24,743 |
| Nov-23 | 0 | 23,625 | 23,625 |
| Dec-23 | 0 | 25,611 | 25,611 |
| Jan-24 | 0 | 28,469 | 28,469 |
| Feb-24 | 0 | 29,529 | 29,529 |
| Mar-24 | 0 | 31,252 | 31,252 |
| Apr-24 | 0 | 32,541 | 32,541 |
| May-24 | 0 | 31,079 | 31,079 |
| Jun-24 | 0 | 31,127 | 31,127 |
| Jul-24 | 0 | 29,374 | 29,374 |
| TOTAL | 0 | 341,240 | 341,240 |

| | <u>Fixed</u> | <u>Index</u> | <u>Total</u> |
|--------|--------------|--------------|--------------|
| Aug-24 | 0 | 24,748 | 24,748 |
| Sep-24 | 0 | 23,818 | 23,818 |
| Oct-24 | 0 | 21,251 | 21,251 |
| Nov-24 | 0 | 20,194 | 20,194 |
| Dec-24 | 0 | 22,548 | 22,548 |
| Jan-25 | 0 | 25,455 | 25,455 |
| Feb-25 | 0 | 27,530 | 27,530 |
| Mar-25 | 0 | 30,696 | 30,696 |
| Apr-25 | 0 | 29,089 | 29,089 |
| May-25 | 0 | 29,253 | 29,253 |
| Jun-25 | 0 | 27,511 | 27,511 |
| Jul-25 | 0 | 24,830 | 24,830 |
| TOTAL | 0 | 306,923 | 306,923 |

Receiving Agency: CITY OF EL PASO

Oscar Lesser

Chairman

Effective Date: 8/1/23

GLO Initials:  _____

EXHIBIT C

CONFIRMATION OF AMENDMENTS TO SCHEDULED GAS VOLUMES
FOR EXHIBIT B GLO CONTRACT NO. 23-151-000-E054 ("Contract")
City of El Paso ("Facility")

Date: _____

1). In an effort to reduce Receiving Agency's Pipeline Imbalance caused by discrepancies between Receiving Agency's actual gas consumption and its estimated consumption scheduled for delivery pursuant to Exhibit B of the Contract, the Texas General Land Office (GLO) and Receiving Agency hereby agree to amend the scheduled volume for the time period indicated below. Provided however the GLO can only accept nomination changes when applicable upstream pipeline carriers accept nomination changes. Nomination changes are typically not accepted on holidays, Sundays, and Mondays, therefore the GLO cannot accept Receiving Agency's changes relative to these days. Nomination changes for Saturday are applicable without change for the following Sunday and Monday, and thereafter until changed.

2). Receiving Agency hereby amends its scheduled volume by checking the appropriate box below:

- a) In accordance with the GLO's suggested volume of _____/day. Resulting in total nominated volumes _____ for the month.
- b) to _____/day.
- or,
- c) The volumes will remain _____ as established in Exhibit B.

3). The Receiving Agency amends its scheduled volumes for gas for the following time period(s)_____.

4). Receiving Agency's selection in Section 2 and 3 of this Confirmation Form and return of via email to the GLO constitutes Receiving Agency's agreement to the change in the scheduled volumes and to execution of this Confirmation Form.

5). In order for the Receiving Agency's selection to be immediately effective, the Receiving Agency must remit by email to caesare.peterson@glo.texas.gov the Confirmation Form before 8:00 AM Central time the day before the effective day of flow. Failure to remit the Confirmation Form by 8:00 AM Central time will void the submitted selection. The Receiving Agency will contact the GLO the next business day to re-amend the scheduled volumes.

6). This Confirmation Form dated _____ supercedes all other such Confirmation Forms and the current Exhibit B for the time period indicated in Section 3 of this form.

7). Receiving Party acknowledges and agrees that this amendment to its scheduled volumes for gas does not guarantee elimination of imbalance charges nor does it relieve Receiving Agency's obligation to pay any imbalance charges pursuant to the Contract.

8). Receiving Agency acknowledges and agrees that the person signing below is authorized to amend Receiving Agency's scheduled volumes.

BY: _____

| | |
|--|-------|
| <input type="checkbox"/> Received by SEMP Initials/Date | _____ |
| <input type="checkbox"/> Updated GMS Initials/Date | _____ |
| <input type="checkbox"/> Routed to Legal Initials/Date | _____ |
| <input type="checkbox"/> Posted into DocuShare Initials/Date | _____ |

ATTACHMENT

Limited Agency Authorization
GLO Contract No. 23-151-000-E054

In an effort to reduce Pipeline Imbalances caused by discrepancies between Receiving Agency's actual gas consumption and its estimated consumption scheduled for delivery pursuant to Exhibit B of the Contract, be able to make more timely mid-month corrections, and reduce excessive paperwork, Receiving Agency hereby appoints the GLO (Agent) as its limited agent with authority to act on its behalf in regards to the following:

Agent is authorized to make nominations of natural gas volumes on Receiving Agency's behalf in accordance with the GLO Contract No. noted above. Such nominations will be based upon Receiving Agency's historical usage or written instructions received from Receiving Agency, and shall be binding upon Receiving Agency without recourse.

This limited agency authorization shall be effective August 1, 2023 and shall remain in full force and effect until terminated by either party upon ten (10) days' prior written notice.

TEXAS GENERAL LAND OFFICE

CITY OF EL PASO

DocuSigned by:

7C299F4374E7497...
Mark A. Havens
Chief Clerk/Deputy Land Commissioner

Oscar Lesser
Chairman

Date of execution: 6/22/2023

Date of execution: _____