

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

DEPARTMENT: Economic Development

AGENDA DATE: July 21, 2015

CONTACT PERSON NAME AND PHONE NUMBER: Memo Sotomayor 915-212-1572

DISTRICT(S) AFFECTED: 8

SUBJECT:

That the City Manager be authorized to sign a License Agreement by and between the City of El Paso ("City") and El Paso Natural Gas Company, L.L.C. ("EPNG") to allow EPNG to use approximately 6.4 acres of City-owned real property within the Keystone Business Park Subdivision, El Paso, Texas, as a temporary work space and staging area as it lowers and extends two existing pipelines across Interstate 10 right of way near the Resler Drive Interchange which relocation is required for the Texas Department of Transportation's Interstate 10 D/C Expansion Project.

BACKGROUND / DISCUSSION:

EPNG had previously been granted a Right of Entry agreement for this same project. That agreement expired. EPNG is requesting an extension. The reason for the extension is two-fold. First is an issue related to planning and construction issues. Secondly, the TxDOT contractor issues caused EPNG to delay some of their required work.

PRIOR COUNCIL ACTION:

Feb. 24, 2015

AMOUNT AND SOURCE OF FUNDING:

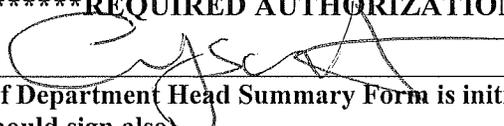
N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

 7/13/2015

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a License Agreement by and between the City of El Paso ("City") and El Paso Natural Gas Company, L.L.C. ("EPNG") to allow EPNG to use approximately 6.4 acres of City-owned real property within the Keystone Business Park Subdivision, El Paso, Texas, as a temporary work space and staging area as it lowers and extends two existing pipelines across Interstate 10 right of way near the Resler Drive Interchange which relocation is required for the Texas Department of Transportation's Interstate 10 D/C Expansion Project.

APPROVED this _____ day of _____, 2015.

CITY OF EL PASO

Oscar Leeser
Mayor

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Cary Westin, Director
Economic and International Development

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

LICENSE AGREEMENT

This License Agreement is granted on this ____ day of _____, 2015, by the CITY OF EL PASO (the "CITY") to EL PASO NATURAL GAS COMPANY, L.L.C. ("EPNG").

WHEREAS, the CITY owns approximately 6.4 acres of real property within the Keystone Business Park Subdivision, which is adjacent to Interstate 10 and further depicted in Exhibit "A", attached hereto and made a part herein and referred herein as the "City Property".

WHEREAS, EPNG has requested permission to use the City Property for a temporary work space and staging area as it lowers and extends two existing pipelines across Interstate 10 right of way near the Resler Drive Interchange in El Paso, Texas; and

WHEREAS, the CITY consents to and approves of the entry onto the City Property by the EPNG and its agents, contractors, subcontractors, employees, invitees, or licensees, subject to the provisions noted herein, for the relocation of the two identified pipelines which relocation is required for the Texas Department of Transportation's Interstate 10 D/C Expansion Project.

IT IS EXPRESSLY UNDERSTOOD AND AGREED by the parties that:

1. **Permitted Use.** Access to the City Property is hereby granted solely to allow EPNG the right to use the City Property as a temporary work space and staging area to lower and extend two of its existing pipelines across the Interstate 10 as required for the Texas Department of Transportation's Interstate 10 D/C Expansion Project. In addition, EPNG shall be allowed to conduct a Texas Historical Antiquities Cultural Resource Survey on the City Property. EPNG's proposal and scope of work ("Permitted Uses") is described in Exhibit "B", attached hereto and made a part herein.

In addition, no construction of any permanent facilities or excavation, other than minor vegetation clearing for portions of the work area, is permitted unless prior written approval is received from the El Paso City Manager (the "City Manager"). If EPNG determines that limited testing of materials is required for any environmental assessments or any investigation of the City Property is required, in addition to a Texas Historical Antiquities Cultural Resource Survey as part of the submittal of an Antiquities Permit Application Form Archeology to the Texas Historical Commission (THC), collectively referred to herein after as the "Investigations", prior to the testing or investigation, a specific request must be delivered to the City Manager detailing the area of the testing, the plans and research design, and the procedure to be used. Only after the City Manager approves the scope and location of the testing or the investigation in writing may the testing or investigation be conducted. EPNG shall be responsible for completing all terms of any THC Antiquities Permit, at no cost to the City. All Investigations performed on the City Property shall be completed in a good, workmanlike manner and in accordance with all applicable federal, state, and local laws, rules, and regulations.

EPNG shall obtain all applicable permits required for its use of the City Property. EPNG shall submit copies of permits to the City Manager prior to beginning work on City Property.

All inspection fees, engineering fees and other costs and expenses of any kind incurred by EPNG relating to its use of the City Property and for any Investigations shall be at the sole cost and expense of EPNG. If any use or Investigation disturbs the City Property, EPNG shall restore the City Property to substantially the same condition as existed before its use of the City Property or the inspection or test, and shall immediately remove its equipment or other equipment from the City Property. Said restoration shall include, but not be limited to, the closure of any inspection holes in accordance with methods and materials acceptable to the City and replacement of any excavated dirt or other material. Further, all work shall be completed in a manner to minimize damage to the City Property. Should any damage occur, EPNG shall be fully responsible for the repair of such damage, to the extent practicable.

2. **Term.** The rights granted herein shall expire on Oct. 31, 2015, without regard to whether the identified Investigations have begun or been completed. However, this License Agreement may be extended or amended in writing and signed by both parties. The City Manager is authorized to execute an amendment or extension of this License Agreement which revises the term of the License Agreement.
3. **Consideration.** In consideration of One Thousand Six Hundred Fifty and no/100 Dollars (\$1,650.00), per month receipt of which is hereby acknowledged, the CITY hereby grants to EPNG access to the City Property for the identified Permitted Uses.
4. **Insurance.** EPNG agrees to be responsible and liable for any damages, including mechanic's and materialmen's liens, caused or arising out of or in connection with EPNG's Permitted Use and Inspections of the City Property. EPNG and its agents, contractors, subcontractors, employees, invitees, or licensees, before entering upon the City Property for any purpose shall obtain, and maintain the following insurance during the term of this License Agreement:
 - A. **Commercial General Liability.** EPNG, at its sole cost and expense shall provide and keep in force for the benefit of EPNG with the CITY as an additional insured, comprehensive general liability insurance in an amount not less than One Million and no/100Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, Two Million and no/100 Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence and Five Hundred Thousand and no/100 Dollars (\$500,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.
 - B. **Automobile Liability.** EPNG, at its sole cost and expense, shall provide and keep in force for the benefit of EPNG with the CITY as an additional insured, automobile liability insurance covering allowed, non-owned, and hired vehicles used by EPNG for all operations with a minimum limit of One Million and no/100 Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.

The policy or policies shall include a waiver of subrogation with respect to the CITY. Loading and unloading of any motor vehicle must be covered by endorsement to the automobile liability policy or policies.

All policies of insurance required herein shall be in a form and with a company or companies reasonable satisfactory to the CITY and shall name the CITY as an additional insured. Each such policy shall provide that such policy may not be materially changed (e.g., coverage limits reduced below the minimum specified in this License Agreement) or otherwise materially altered, or canceled by the insurer during its term without first giving at least thirty (30) days written notice to the CITY. Policies or certificates of valid policies of insurance with required coverages shall be delivered to the City Manager prior to any entry by EPNG or EPNG's representative on the City Property and all required coverages must be in full force and effect throughout the term of this License Agreement. The provisions of this Section shall survive the term of this License Agreement.

- C. Workers' Compensation Insurance. EPNG shall obtain, and maintain throughout the term of this License Agreement, Workers' Compensation and Employers Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers liability of One Million and no/100 Dollars (\$1,000,000.00) bodily injury each accident, One Million and no/100 Dollars (\$1,000,000.00) bodily injury by disease policy limit, and One Million and no/100 Dollars (\$1,000,000.00) bodily injury by disease each employee. The following endorsements shall be added to the policy:

1. A Waiver of Subrogation in favor of the CITY; and
2. A thirty (30) day Notice of Cancellation/Material Change in favor of the CITY.

5. Indemnification. EPNG AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT, OR MANAGEMENT OF ANY ACTIONS BY EPNG, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES ON THE CITY PROPERTY, OR FROM ANY BREACH ON THE PART OF EPNG, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES OF ANY TERMS OF THIS LICENSE AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF EPNG, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, INVITEES, OR LICENSEES IN OR ABOUT THE CITY PROPERTY INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF THE CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE CITY BY REASON OF ANY SUCH CLAIM, EPNG, UPON NOTICE FROM THE CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE CITY.

6. **Penalties.** EPNG understands and agrees that in the event any federal or state regulatory agency assesses a civil penalty against the CITY for any violation of applicable regulations, and such civil penalty shall be imposed as a result of any act or failure to act on the part of EPNG, its agents, contractors, subcontractors, employees, invitees, or licensees, EPNG will immediately reimburse the CITY in the amount of the civil penalty assessed.
7. **Contractors and Subcontractors.** In its use of the City Property and any Investigations, EPNG anticipates the use of the additional agents, contractors, subcontractors, employees, invitees, or licensees noted herein. In the event that additional agents, contractors, subcontractors, employees, invitees, or licensees are deemed necessary by EPNG, EPNG shall provide written notice of the need for such additional agents, contractors, subcontractors, employees, invitees, or licensees to the CITY.
8. **Access and Investigations.** EPNG shall coordinate access and the Investigations with the City Manager in advance, so as to minimize interference with the performance of the City's use of the City Property. EPNG shall notify the City Manager at least forty-eight (48) hours in advance of accessing the City Property. The notice shall include a description of the access or work to be completed; a list of agents, contractors, subcontractors, employees, invitees, or contractor(s) to complete the work, and an identification of the location of EPNG, its agents, contractors, subcontractors, employees, invitees, or licensees for which access to the City Property is required. EPNG's activities on City Property shall be limited to the period between 7:00 a.m. and 7:00 p.m., Monday through Saturday. EPNG shall request and receive written approval in advance from the City Manager for any deviation to these set work periods. EPNG shall access the City Property from its easement and from land owned by the Catholic Dioceses of El Paso.
9. **Surveys and Reports.** EPNG shall provide the City Manager with one (1) draft report of any Investigation before the report is finalized. The City Manager will review the draft report in a timely manner. Within ten (10) calendar days after EPNG receives the City Manager's written comments and EPNG's finalization of any reports, EPNG will deliver one (1) hard copy and an electronic file (a pdf and tiff file on one CD) of the final surveys, environmental assessments, archeological reports, and testing reports or any other documents generated from EPNG's Permitted Use of and Inspections on City Property, at no charge.

EPNG agrees that all information it obtains regarding the environmental, archeological, and physical condition of the City Property ("Evaluation Material") will be used solely for the purpose of its work related to its relocation of the identified pipelines as required for the Texas Department of Transportation's Interstate 10 D/C expansion project and agrees that all such information will be kept confidential by the EPNG except to the extent disclosure of such information has been consented to by the CITY. Notwithstanding anything to the contrary contained herein, however, nothing herein shall prevent EPNG from disclosing the Evaluation Material to the extent EPNG and the CITY are required to do so by applicable law.

10. **Notice.** All notices to be given under this License Agreement shall be delivered by hand or given by certified or registered mail, receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

CITY: CITY OF EL PASO
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

EPNG: El Paso Natural Gas Company, L.L.C.
Attn: Land and Right of Way
8725 Alameda Park Drive NE
Albuquerque, New Mexico 87113

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown on the return receipt for delivery, rejection, or undeliverable. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other in the manner set forth in this paragraph.

11. **Transfers.** EPNG shall not assign, sublet, sell, convey, or transfer all or any part of this License Agreement in any way without the prior written consent of the CITY. Any attempt to transfer or assign without the prior written consent of the CITY shall be void and may result in the termination of this License Agreement.
12. **Texas Law.** This License Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Texas. Any controversy arising out of or connected with this License Agreement or the underlying work shall be instituted and maintained in the courts of the State of Texas, County of El Paso.
13. **Relationship.** Nothing in this License Agreement shall be construed as creating the relationship of employer and employee or agent between any of the parties named herein.
14. **No Real Property Interest.** This License Agreement is granted solely for the Permitted Uses and any Investigations as referenced herein. The Parties expressly understand and agree that the granting of any related easement or other such rights shall require the execution of additional instruments and/or proper legal actions.

(Signatures follow on next page)

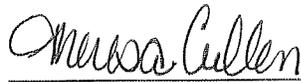
EXECUTED THIS _____ DAY OF _____, 2015.

THE CITY:

CITY OF EL PASO, TEXAS

Tomás González
City Manager

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Cary Westin, Director
Economic and International Development

ACKNOWLEDGMENT
THE CITY

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ of _____, 2015, by Tomás González, as City Manager of the City of El Paso.

Notary Public, State of Texas

Seal

(Signatures continue on the following page)

EPNG:

EL PASO NATURAL GAS COMPANY, L.L.C.

By: *W.G. Heidke*
Printed Name: WILLIAM G. HEIDKE
Title: SR LAND AGENT

ACKNOWLEDGMENT
EPNG

STATE OF New Mexico
COUNTY OF Bernalillo

This instrument was acknowledged before me this 13th day of July, 2015, by William
G. Heidke, as Senior of El Paso Natural Gas Company, L.L.C.
Land Agent

Linda T. Anaya
Notary Public, State of 1218-018

Seal

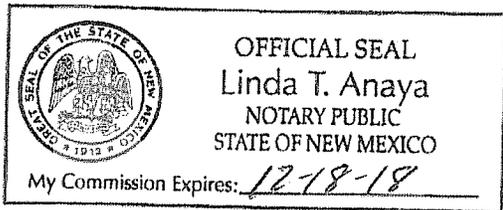


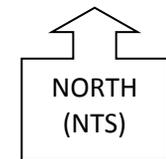
EXHIBIT "A"
CITY PROPERTY DEPICTION



LEGEND:

- L2034/L2058 EXISTING PIPELINES
- EXISTING EPNG RIGHT OF WAY
- CITY PROPERTY = 6.4 acre (TWS AREA)
- PROPERTY LINES
- TXDOT I-10 RIGHT OF WAY BOUNDARY

“EXHIBIT A”
L2034/L2058 Horizontal Directional Drill (HDD)
For TxDOT I-10 D/C Project



City of El Paso Property : Temporary Work Space Request
 El Paso, Texas



El Paso
Natural Gas Company
 a Kinder Morgan company

EXHIBIT "B"

EPNG PROPOSAL AND SCOPE OF WORK

PROJECT PROPOSAL/SCOPE OF WORK: Due to TxDOT's I-10 D/C expansion project, EPNG will be required to lower and extend two of its existing pipelines across the I-10 right of way. The process for this will require EPNG to install two new pipelines by horizontal directional drill (HDD) across the ROW for a pipe distance of approximately 700 feet. In order to maintain the integrity of the connections of each pipe section pulled through the bore, EPNG prefers to fully connect (weld) the total length of the pipe and test to assure no leaks are found before pulling. This requires a work space area of at least 700 feet in length. After the new pipelines are installed and re-tested to assure integrity, then the old pipelines will be cut and connections will be made to the new pipelines. The old pipe of approximately 500 feet will then be removed by pulling out of its casing across the ROW, and the casing will be slurry filled and capped.

In addition, EPNG will conduct a Texas Historical Commission Antiquities Cultural Resource Survey, which will involve an intensive archaeological field survey of the City Property. The survey will be of sufficient intensity to determine the nature, extent, and if possible, significance of any cultural resources located within the City Property.

EQUIPMENT TO BE STORED/USED ON TEMPORARY WORK SPACE AREA: Equipment that will be used on the City Property will include standard construction pick-ups, welding trucks, track-hoe, back-hoe, a boring drill rig, water tank for integrity testing, concrete truck, semi-tractor/trailers for hauling in pipe and large equipment. Material storage of pipe and associated fittings for the project will be placed on the City Property.