



## COMMISSIONERS COURT COMMUNICATION

AGENDA DATE: May 21, 2012

CONSENT OR REGULAR: Consent

CONTRACT REFERENCE NO  
(IF APPLICABLE): K120226

**SUBJECT:** Approve and authorize the County Judge to sign an Agreement between the County and Texas Gas Service Company to extend gas service to the Ascarate Park Pavilion at a cost of \$28,000 as part of the County's renovation of this facility.

### **BACKGROUND/DISCUSSION OF TOPIC:**

The County allocated funds for various capital improvement projects for Ascarate Park. The projects focused on improving, renovating, or replacing structures that had reached their useful life. One of the renovation projects was to upgrade the Pavilion. Western Playland leased the Pavilion during its tenancy at the Park. At the conclusion of this occupancy, use of the facility returned to the County. Staff recommended upgrading of the Pavilion to a facility for year around use. The restrooms did not meet current ADA requirements and the building required heating and cooling service for year round occupancy. There was no existing gas line to the Pavilion. Part of the upgrades requires an extension of a gas line from the Park entrance to provide service to the Pavilion. This effort requires an Agreement with the provider, Texas Gas. Service Company. This Agreement sets the cost of extending gas services at \$28,000. The contractor will bore the line rather than trench to minimize excavation of water lines in the Park. The County's Public Work engineers approved the location of the line.

### **FISCAL IMPACT:**

Funds are available from CPASPKIM07.

### **PRIOR COMMISSIONERS COURT ACTION (IF ANY):**

Commissioners Court authorized this project as part of its capital improvement efforts funded in December 2007 from the issuance of Certificates of Obligation.

**RECOMMENDATION:** Department recommends approval of this item.

### **COUNTY ATTORNEY APPROVAL**

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY: Janet Monteros

LEGAL REVIEW: Approved as to Form with Amendments/Modifications

LEGAL REVIEW NOTES (If Applicable):

DATE: May 15, 2012

SUBMITTED BY:

Rosemarv V. Neill. Director. 834-8201

THIS AGREEMENT made and entered into between TEXAS GAS SERVICE COMPANY, (hereinafter called "Company") and  
**DIRECTOR OF FAMILY & COMMUNITY SERVICES** **CONTACT: ROSEMARY NEILL**  
**800 E. OVERLAND, STE. 208** **PHONE: (915)**  
**EL PASO, TX 79901** (hereinafter called "Applicant").

WITNESSETH  
WHEREAS, the Applicant desires that the Company extend its gas mains generally along the following route and between the following points  
**ASCARATE PARK PAVILION (MLE)**

a length of 1760 feet (hereinafter called the "Extension") for the purpose of furnishing natural gas service to potential consumers located or to be located on such route; and

WHEREAS, the parties estimate that there will be no consumers using natural gas for domestic purposes who will be served directly from the Extension at the end of a 5 year period next succeeding completion thereof and the following non-domestic consumers whose annual usages justify the allowances set out below:  
\_\_\_\_\_, \$ \_\_\_\_\_; \_\_\_\_\_, \$ \_\_\_\_\_  
\_\_\_\_\_, \$ \_\_\_\_\_; \_\_\_\_\_, \$ \_\_\_\_\_  
\_\_\_\_\_, \$ \_\_\_\_\_; \_\_\_\_\_, \$ \_\_\_\_\_  
who will be served directly from the Extension upon its completion; and

WHEREAS, Company proposes to install the necessary facilities at an estimated cost of \$ 28,000 when necessary approvals thereof have been received; and

WHEREAS, the total allowance for the consumers to be served from the Extension is \$ -0-, which is less than the cost of the Extension;

NOW THEREFORE, in consideration of theses premises, it is agreed as follows:

1. Applicant shall pay to Company the sum of \$ 28,000 to cover the difference between the cost of the Extension and the total allowance therefor.
2. At each of the first 5 anniversaries of the completion of the Extension or as near thereto as practical, the Company will determine a new allowance which shall be the total of:
- (a) for each permanent year-round domestic consumer served directly from the Extension at the time of the review, and each permanent seasonal domestic consumer connected to the Extension within three months after its completion and served directly from it at the time of the review, the sum of \$ 0; plus
- (b) for each permanent non-domestic consumer served directly from the Extension at the time the review either (i) an amount determined in accordance with the Company's established policies being applied at the time on a uniform basis in the service area where the Extension is located, giving due consideration to actual revenues received and cost of gas delivered during the last 12 billing months preceding the date of the review, or (ii) if such sum would be greater than the amount just stated and the consumer is not a seasonal consumer, the sum of \$ 0.
3. Subject to the limitations of Paragraph 4, the Company shall make a refund to the Applicant in the amount that the total allowance computed at the review period in accordance with Paragraph 2 above, exceeds the highest of:
- (a) the allowance set forth hereinabove, or
- (b) the highest total allowance computed at the end of any previous review period in the case of an annual review after the initial review.
4. The Company's obligation to make refund as provided in Paragraph 3 shall be subject to the following conditions and limitations:
- (a) No refund will be due or made for any consumer connecting with or using gas from a further extension of the Extension described above or any other extension connected laterally thereto.
- (b) The total refund to Applicant shall in no event exceed the amount paid by Applicant as stated above.
- (c) No interest shall be paid on the amount advanced hereunder.
- (d) No refund shall be due or payable hereunder on account of consumers connected to the Extension after expiration of 5 years from the date of completion of the Extension.
- (e) If more than one party executes this agreement as Applicant, refund due hereunder will be payable in equal proportions to the parties executing this agreement.
5. As soon as practicable after the date borne by this agreement, but not prior to the payment by Applicant called for by Paragraph One above, the Company shall commence work on the Extension and thereafter prosecute the same to completion with reasonable diligence. However, in no event shall the Company be obligated to commence the Extension occasioned by inability to obtain right of way or other events or conditions reasonably beyond the Company's control. In the event the payment by Applicant called for in Paragraph One above has not been made within 180 days from the date of execution of this agreement by Company or if for any reason beyond its control the Company has not commenced construction of the Extension within 180 days from the date of execution by the Company of this agreement, the Company may at its option (1) cancel this agreement by giving the Applicant 15 days notice prior to the date of cancellation, (2) redetermine the cost of the Extension and adjust the amount of payment to be made by Applicant in accordance with such cost, or (3) install the Extension pursuant to the terms and conditions originally contemplated by this agreement. In the event the Company elects to cancel this agreement for any of the causes set forth herein, the Company shall, at the time of notice of cancellation, refund to Applicant all payments, if any, that have been paid by Applicant pursuant to the terms and conditions of this agreement.
6. The Company shall not be responsible for delays during construction of the Extension occasioned by differing, unanticipated or unforeseen physical conditions, structures or facilities. To compensate the Company for any additional costs, an increase in compensation will be allowable to the extent that such increase is attributable to any such inaccuracy or difference.
7. The title, possession and full dominion and control over the Extension shall at all times be and remain vested exclusively and unconditionally in the Company and its successors and assigns.
8. Applicant may, by proper instrument, transfer his interest in any unrefunded portion of the moneys paid to the Company under this agreement but the Company shall not be required to honor such assignment until duly notified in writing by Applicant; and thereafter all refunds made hereunder will be made to such assignee but only in the manner and within the time provided herein.

IN WITNESS WHEREOF the parties hereto have executed this agreement in triplicate at \_\_\_\_\_, this 14 day of MAY, 2012.

**DIRECTOR OF FAMILY & COMMUNITY SERVICES**  
**800 E. OVERLAND, STE 208**  
**EL PASO, TX 79901**

**TEXAS GAS SERVICE COMPANY**  
**4700 POLLARD STREET**  
**EL PASO, TX 79930**

\_\_\_\_\_  
APPLICANT

\_\_\_\_\_  
COMPANY

FOR OFFICE USE ONLY	091.051.7650.010474.137600	Lots/Connections =	1*
AFA Number 105-12	W.O.# 12-9926	Preparer: E. SANCHEZ	Date Completed
Allowance for Domestic Customers			
Allowance for Other Customers			
Total Allowance			
Refund			

STATE OF TEXAS                   §

§

COUNTY OF EL PASO §

**EXTENSION OF GAS LINE AGREEMENT ADDENDUM**  
**TEXAS GAS SERVICE COMPANY**

This agreement is between the County of El Paso, a political subdivision of the State of Texas, ("**COUNTY**"), and TEXAS GAS SERVICE COMPANY. ("**COMPANY**"), collectively ("THE PARTIES"). The following provisions are added by agreement of THE PARTIES. To the extent that any provisions in the main body of the agreement conflict with the provisions of this addendum, this addendum shall control. The following terms and conditions are added:

**9.Taxes.** COUNTY is a tax exempt political subdivision of the State of Texas and its Tax Identification Number is 746000762. COUNTY shall not be liable for any taxes for which it is otherwise exempt.

**10. Venue and Choice of Law.** The parties acknowledge that COUNTY is a political subdivision of the State of Texas. As such, THE PARTIES agree that this Agreement shall be construed in accordance with the laws of the State of Texas. Moreover, in the event of litigation, venue and jurisdiction shall lie in El Paso County, Texas.

**11. No Automatic Renewals.** This contract continues for the term agreed to and may not be renewed except by written agreement of THE PARTIES.

**12. Deferred Payment Terms and Texas Prompt Payment Act.** If a payment is not received by Texas Gas Service Company within 30 days after the Due Date(s), Company may charge the applicable interest rate under the Texas Prompt Pay Act, pursuant to Texas Government Code Chapter 2251.

**13. No Indemnification.** THE PARTIES acknowledge that COUNTY is a political subdivision of the State of Texas. As such, Texas law effectively prohibits COUNTY from indemnifying anyone.

IN WITNESS WHEREOF, the parties execute this agreement on the \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

**THE COUNTY OF EL PASO**

\_\_\_\_\_ By \_\_\_\_\_

County Clerk

County Judge Veronica Escobar

Approved as to form:

**TEXAS GAS SERVICE COMPANY**

\_\_\_\_\_ By \_\_\_\_\_

Assistant County Attorney

(name) \_\_\_\_\_

(title) \_\_\_\_\_

(Signor must have legal authority to bind corporation)

**From:** Janet Monteros  
**Sent:** Tuesday, May 15, 2012 3:02 PM  
**To:** Rosemary Neill  
**Cc:** Alicia Vera; Josefina Vasquez  
**Subject:** RE: Texas Gas Services - k2012-0226 -- Texas Gas Services Agreement for Ascarate Park  
**Attachments:** K120226.Addendum to Gas Line Extension Agreement.docx

## **COUNTY LEGAL REVIEW FORM**

KK-12-0226

Contract Description: Texas Gas Services Agreement for Ascarate Park

### **COUNTY ATTORNEY ACTION\*\***

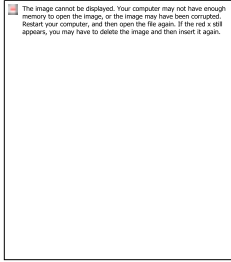
**\*\*Requested Amendments/Clarifications:** We assume you have submitted any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

\_\_\_\_\_ Approved as to Form as Submitted  
\_\_\_\_XX\_\_\_\_ Approved as to Form with Amendments/Modifications/Reservations Noted  
Below\*  
\_\_\_\_\_ Not Approved

\*1) Addendum attached to accompany master agreement

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

**Janet Monteros**  
**Assistant County Attorney**



*JANET I. MONTEROS, ASSISTANT COUNTY ATTORNEY*

*General Counsel Unit*

*EL PASO COUNTY ATTORNEYS OFFICE*

*500 E. San Antonio, Ste. 503*

*El Paso, Texas 79901*

*915-546-2050 ext. 3209*

*915-546-2133 facsimile*

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**From:** Rosemary Neill  
**Sent:** Tuesday, May 15, 2012 10:24 AM  
**To:** Lee Shapleigh; Josefina Vasquez; Janet Monteros  
**Subject:** RE: Texas Gas Services

Thank you.

Rosemary V. Neill  
Director of Family and Community Services  
El Paso County  
800 E. Overland, Suite 208  
El Paso, Texas 79901  
915-834-8201  
915-875-8524 FAX

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**From:** Lee Shapleigh  
**Sent:** Tuesday, May 15, 2012 9:29 AM  
**To:** Josefina Vasquez; Janet Monteros  
**Cc:** Rosemary Neill  
**Subject:** FW: Texas Gas Services

Assign to Janet. Due date 5/22.

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**From:** Josefina Vasquez  
**Sent:** Tuesday, May 15, 2012 8:06 AM  
**To:** Lee Shapleigh  
**Subject:** FW: Texas Gas Services

Please assign.

Thank you - Josie Vasquez

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**From:** Rosemary Neill  
**Sent:** Monday, May 14, 2012 6:22 PM  
**To:** Alicia Vera; Josefina Vasquez  
**Subject:** Texas Gas Services

Our program architect dropped this agreement off this afternoon. Texas Gas Service has already performed the work. We made the application in December of last year but their internal process delayed action. They were embarrassed by their inaction and authorized a contractor to bore the line.

Our Public Works Department approved the route for the line. This is their standard agreement, which must be signed to authorize payment for the services rendered. I'm hoping to move this along so we can pay them as quickly as possible.

Rosemary V. Neill  
Director of Family and Community Services  
El Paso County  
800 E. Overland, Suite 208  
El Paso, Texas 79901  
915-834-8201  
915-875-8524 FAX