

**ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 06/10/15
ITEM FROM FINANCE COMMITTEE MEETING OF 06/01/15**

ISSUE:

19. Request for Approval of Procurement Under State Price Agreement – City-Wide Sale and Purchase of Natural Gas; Continuum Retail Energy Services, LLC. (Nick Schiavo)

FINANCE COMMITTEE ACTION:

Approved as Discussion Item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

| VOTE | FOR | AGAINST | ABSTAIN |
|-----------------------|-------------|----------------|----------------|
| COUNCILOR TRUJILLO | X | | |
| COUNCILOR RIVERA | X | | |
| COUNCILOR LINDELL | Chair | | |
| COUNCILOR MAESTAS | X | | |
| CHAIRPERSON DOMINGUEZ | Not present | | |

4-13-15

City of Santa Fe, New Mexico

memo

Date: May 19, 2015

To: Robert Rodarte, Director, Purchasing Division

Via: Brian K. Snyder, City Manager

From: Nicholas Schiavo, Public Utilities Department Director *NSA*

ITEM & ISSUE

Utilizing the State of New Mexico Agreement for Sale and Purchase of Natural Gas, Price Agreement No. 50-000-15-00049 between the State of New Mexico and Continuum Retail Energy Services, L.L.C., (the "Natural Gas Marketer Services"). The contract was approved on May 11, 2015 and expires on May 11, 2023.

BACKGROUND & SUMMARY

The City of Santa Fe has been using the services of a natural gas marketer since 2008 and has saved an average of 12.5 percent per year. That savings equates to approximately \$61,000 per year over the price of the New Mexico Gas Company.

The State of New Mexico Purchasing Division recently went through the selection process for natural gas marketing services and selected Continuum Retail Energy.

The State of New Mexico Pricing Agreement No. 50-000-15-00049 with Natural Gas Marketer outlines the following pricing options:

1. Index Price – Inside FERC, first of the month San Juan index price plus \$0.095/Dekatherm.
2. Fixed Price – A fixed price may be negotiated between the Contractor and end user as opportunities arise and is subject to the final price for a specific term.

For all options listed above, the vendor additionally shall be reimbursed for expenses as follows:

- New Mexico Gas Company line loss. (Currently 1%)
- New Mexico Gas Company Monthly Access Fee

- New Mexico Gas Company Distribution Charges
- New Mexico Gas Company Transmission Charges
- New Mexico Gas Company RR 8 & 9 Charges discounted for transportation
- Above New Mexico Gas Company rates are subject to oversight by the Public Regulation Commission (PRC) and may be subject to change during the term of this agreement, based on PRC approval.

A comparison of the cost of natural gas between the San Juan Index and New Mexico Gas Company shows that over the last five years the San Juan Index has been an average of \$1.00 less per dekatherm. It should be noted that this does not account for the additional fees associated with using NMGC's facilities.

Option One: Index Price – Based on the first of the month San Juan index plus \$0.095/Dekatherm. **This is the recommended option.**

Option Two: Fixed Price (Hedged Price) – **This option should be considered provided a reasonable price per dekatherm can be negotiated.** Note this option is available to the City throughout the term of the contract.

The City's current natural gas marketer, BP Energy Company choose not submit a proposal to the State of New Mexico. The City of Santa Fe contract with BP Energy Company is set to expire on June 30, 2015.

The Public Utilities Department is requesting that the Purchasing Division forward the below listed recommendation to the Finance Committee scheduled for June 1, 2015 and to City Council scheduled for June 10, 2015 for approval at their meetings.

RECOMMENDATION

The Public Utilities Department recommends:

1. The utilization of the State of New Mexico Agreement for Sale and Purchase of Natural Gas, Price Agreement No. 50-000-15-00049 between the State of New Mexico and Continuum Retail Energy Services, L.L.C., (the "Natural Gas Marketer Services").

Attachments:

1. Continuum Retail Energy Services, L.L.C. Contract

Appendix H

CONFIRMATION AGREEMENT ISSUED UNDER
NATURAL GAS MARKETING STATEWIDE PRICE AGREEMENT 50-000-15-00049

| | |
|---|---|
| Buyer: City of Santa Fe – Water Division | Seller: Continuum Retail Energy Services, L.L.C. |
| Tel: 505-955-4267 | Tel: 505-514-5470 |
| Email: naschiavo@santafenm.gov | Email: aapodaca@continuumes.com |
| Fax: 505-955.4275 | Fax: 303-457.2690 |
| Contact: Nicholas Schiavo | Contact: Anthony Apodaca |
| Tax ID No.: 85-6000168 | Tax ID No.: 73-1544967 |

Buyer and Seller confirm the following transaction between Buyer and Seller pursuant to the Natural Gas Sales Agreement identified above:

Confirmation Date: May 19, 2015 **Period of Delivery:** 07/01/2015 **through:** 06/30/2016

Purchase Price (Select One):

- First of the month Index Price at San Juan plus \$.095 MMBTU plus posted tariff rate transportation cost and fuel, 1% fuel, and fees on NMGC's system.
- Fixed price San Juan: \$ _____ per MMBTU; plus posted tariff rate transportation cost and fuel, 1% fuel, and fees on the NM GAS COMPANY system.
- Guaranteed Percentage Savings 8% (as defined in the Natural Gas Agreement)

Point(s) of Delivery: NM GAS COMPANY City Gate. NM GAS COMPANY will transport to the Entity's facility on the Contractor's NM GAS COMPANY contract.

Overs and Unders:

San Juan Locations: first of the month Index at San Juan, plus \$.095 per MMBtu, (*supply fee included*) plus NMGC 1% and fees on their system. Loads +/- to the contracted amount will be sold at WACOG plus \$.095 per MMBtu or credited back to you at back at WACOG flat.

Permian Basin Locations: first of the month Index at the Permian, plus \$.12 per MMBtu, plus Intrastate Transport and fuel, plus NMGC 1% and fees on their system. Loads +/- to the contracted amount will be sold at WACOG plus \$.12 per MMBtu plus Intrastate transport and fuel or credited back at WACOG flat.

CITY OF SANTA FE: (Buyer)

Continuum Retail Energy Services, LLC: (Seller)

JAVIER M. GONZALES, MAYOR

NAME & TITLE

DATE: _____

DATE: _____

CRS # _____
City of Santa Fe Business
Registration # _____



State of New Mexico
General Services Department

Statewide Price Agreement

Awarded Vendor
0000114812
Continuum Retail Energy Services LLC
PO Box 5603
Denver, CO 80217
Apodaca, Anthony <aapodaca@continuumes.com>
Telephone No. 505-514-5470

Price Agreement Number: 50-000-15-00049

Payment Terms: Net 30

F.O.B.: Destination

Delivery: As Requested

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law.

Procurement Specialist: Travis Dutton

Telephone No.: 505-827-0477

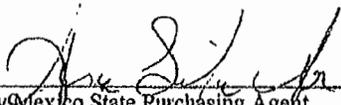
Invoice:
As Requested

Title: Natural Gas Marketer Services

Term: May 11, 2015 thru May 10, 2016

This Statewide Price Agreement is made subject to the "terms and conditions" shown herein.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 5/6/15

STATEWIDE PRICE AGREEMENT NO. 50-000-15-00049

STATE OF NEW MEXICO
FOR
Natural Gas Marketer Services

THIS AGREEMENT is made and entered into by and between the State Purchasing Division, State of New Mexico, herein after referred to as the "agency" and Continuum Retail Energy Services, L.L.C. herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

"Agency" means the State Purchasing Division of the General Services Department.

"Agreement Administrator" means the individual appointed by the SPA to administer the Price Agreement.

"Authorized Purchaser" means an individual authorized by a Participating Entity to place orders against this contract.

"Award" means the final execution of the contract document.

"Balancing" means equalizing a shipper's receipts of gas into a pipeline with deliveries. Balancing may be accomplished daily, monthly or seasonally with penalties assessed for excessive transportation imbalance. Before imposing penalties, however, shippers are generally provided notice and an opportunity to remedy the imbalance.

"British Thermal Unit (BTU or Btu)" is a traditional unit of energy equal to about 1055 joules. It is the amount of energy needed to cool or heat one pound of water by one degree Fahrenheit.

"Burner Tip" means the end point at which natural gas is used as a fuel.

"Burner Tip Price" The price paid for the gas that is burned is referred to as the burner tip price. Since this is the end of the process, this price must reflect not only the cost of the natural gas itself, but also all the costs of finding, pumping, transporting, and delivering the gas.

"Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

"Cash-Out" describes a mechanism that allows shippers to resolve imbalances by selling gas to the pipeline, or purchasing gas from the pipeline.

"City gate" means the physical interconnection location where gas is exchanged from a transmission pipeline to a local distribution company (LDC).

"**Close of Business**" means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

"**Commodity Charge**" means that portion of a natural gas sales or transportation rate based upon the volume actually used or shipped, as opposed to a reservation or demand charge.

"**Confidential**" means confidential financial information concerning Contractor's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

"**Contract**" means this agreement.

"**Curtailment**" means reduction of gas deliveries because of shortage of supply or because demand for service exceeds a pipeline's capacity.

"**Dekatherm (Dth)**" is a measurement unit for heat; 1,000,000 BTU

"**Demand Charge**" is the portion of a gas or transportation charge that reflects a customer's contract requirements; usually a set monthly fee, based on contract requirements for a peak day.

"**Determination**" means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

"**Desirable**" the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

"**Firm Service**" means the highest quality sales or transmission service offered to customers under a filed rate schedule that anticipates no planned interruption.

"**Firm Transportation (FT)**" Firm transportation is reserved, non-interruptible capacity on an interstate or intrastate pipeline. FT contracts are typically between a pipeline operator and a purchaser for an extended period of time. FT can also be obtained for shorter periods of time by way of a release, whereby the holder of FT can sell or release their capacity to willing buyers under terms and conditions established by the parties.

The cost of FT usually includes a demand, or reservation charge.

"**Force Majeure**" means an "Act of God" or unexpected and disruptive event beyond the control of a buyer or seller that interferes with a party's ability to perform under a contract. A force majeure event will typically relieve a party from a contract obligation.

"**Hedging**" means taking a temporary futures or options contract position that is commensurate in volume with, and the opposite position of, a cash position to protect against adverse price moves.

"Hourly Rate" means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for Contractor personnel, as well as subcontractor personnel if appropriate.

"Imbalance" means a discrepancy between the amounts a shipper contracted to use or transport, and actual volumes used or transported. Shippers may be forced to pay an imbalance penalty for variances greater than a certain percentage. Marketers will take responsibility to balance load so their customers can avoid penalties.

"Index Price" means an agreement to buy or sell based upon an average price published in a recognized trade journal.

"Interstate Pipeline" is a pipeline that transports gas across state borders from gas production areas to local distribution companies. The Federal Energy Regulatory Commission (FERC) regulates interstate pipelines.

"Intrastate Pipeline" is a pipeline that transports gas within a state's borders from gas production areas to local distribution companies. The New Mexico Public Regulatory Commission (NMPRC) regulates intrastate pipelines within New Mexico.

"Load Factor" means the ratio of the amount of gas a customer actually takes compared to the maximum amount the customer is entitled to take under full load conditions. Can be expressed: daily, weekly, monthly or annually.

"Local Distribution Company" is the company providing burner tip delivery within a given community and is referred to as the LDC.

"Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.

"Marketer" means a company, other than the pipeline or LDC that buys and resells gas or brokers gas for a profit. Marketers also perform a variety of related services, including arranging transportation, monitoring deliveries and balancing. An independent marketer is not affiliated with a pipeline, producer or LDC.

"Maximum Daily Quantity (MDQ)" means the peak day (24-hour period) usage that the purchaser is entitled to take under Contract. Often, penalties are assessed when the MDQ is exceeded on a given day. This may also be called the peak demand or maximum contract quantity (MCQ).

"MBTU or MMBTU" stands for one million British Thermal Units (BTU).

"Nomination" means a shipper's offer to move gas on a pipeline during a given period. Most nominations are made on a daily basis, although midday and hourly nominations are possible on some systems.

"New York Mercantile Exchange (NYMEX)" World's largest energy futures exchange, site of natural gas futures and options trading.

"New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

"Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property or service to the procuring agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

"Procuring agency" means any state agency or local public body that chooses to procure products or services under this Agreement. Other units of government, including cities, counties, school districts, institutions of higher education and other jurisdictions not subject to the procurement authority of the SPA, are authorized to buy from this Agreement.

"Products and Services schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

"Project" means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

"Purchase order" means the document, which directs a Contractor to deliver items of tangible personal property or services pursuant to an existing contract.

"Reservation Charge or Fee" means a charge paid to reserve firm transportation capacity on a pipeline. In straight Fixed Variable rate design, it covers the pipeline's fixed costs. Also referred to as a demand charge.

"Service Territory" means the physical area served by a utility.

"Settlement Price" is the final price posted for a day's trading, based on the closing range, by NYMEX settlement committee.

"Shoulder Months" normally defined as spring and fall months when gas demand is lowest.

"SPD" means State Purchasing Division of the New Mexico State General Services Department.

"Spot Market" means a market characterized by short-term, typically interruptible or best efforts contracts for specified volumes of gas. The bulk of the natural gas Spot Market trades on a monthly basis.

"Staff" means any individual who is a full-time, part-time, or an independently contracted employee with the Contractor's company.

"Standby Service" means service that involves a pipeline or local distribution company guaranteeing to fill in with gas supplies in the event a transportation customer's other supplies are inadequate or not available.

"State (the State)" means the State of New Mexico.

"State Agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

"State Purchasing Agent" means the director of the purchasing division of the general services department.

"Tariff" means the compilation of all the effective rate schedules for a regulated company, along with general terms and conditions of service.

"Therm" means a unit of heating value equivalent to 100,000 BTUs.

"Unbundling" is a method in which the total gas service is separated into its various components (i.e., the gas commodity and transportation service) and permits the purchaser to separately buy components from different sellers.

"Wellhead Cost of Gas" means the price of natural gas at the point where it is produced prior to entering an interstate or intrastate pipeline system.

"Written" means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

"You" and "your" refers to Continuum Retail Energy Services, L.L.C. "We," "us" or "our" refers to the State of New Mexico, agencies, commissions, institutions, political sub-divisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

2. Scope of Work

The Purchasing State and Local Public Bodies require the Contractor to assist the Using Agencies in optimizing the cost and reliability of natural gas, *provided* however that Contractor shall not be liable for any assistance given in such regard. Contractor is a competitive seller of natural gas and not a consultant or advisor to its customer. The Contractor (marketer) shall deliver natural gas to the city gate for the using facilities. Additionally, the Contractor shall assist Using Agencies in establishing a

transport relationship with the Local Distributing Company (LDC). The duties to be performed by the Contractor shall include, but not be limited to, the following:

2.1 Natural Gas Supply Evaluation, Negotiation and Procurement:

Provide reliable and cost-effective natural gas from a diversified supply base, pursuant to the prices and terms contained herein. Provide information to the Purchasing State and Local Public Bodies and applicable Using Agencies routinely of supply and market conditions and trends. This is to include information regarding supply arrangements and index trends, provided that it is understood, with regard to this entire Contract, that Contractor is not acting in the role of consultant or advisor and shall not be liable in any manner with regard to the provision of any information so provided.

Advise applicable Using Agencies when it appears that the cost of direct purchase gas will exceed the unit cost of local distributor gas, provided that it is understood that Contractor is not acting in the role of consultant and shall not be liable with regard to the provision of any such information.

2.2 Transportation Evaluation, Negotiation and Procurement:

Arrange for the transport of the natural gas from the supply source to the designated city gate(s). Provide the most reliable and lowest cost transport available, per the prices and terms set forth herein.

2.3 Long Term Planning and Price Risk Management:

Provide data to help agencies select a price risk strategy to complement the Procuring State and Local Bodies' goals and risk profile, provided that it is understood that Contractor is not acting in the role of consultant and shall not be liable with regard to the provision of any such information.

Provide assistance and training for risk management tools such as utilization of a fixed price and market information, provided that it is understood that Contractor is not acting in the role of consultant and shall not be liable with regard to the provision of any such information.

The Contractor shall designate one employee as the State's "Customer Service Representative." This person shall coordinate the services provided to the Procuring State and Local Bodies and must have the authority to resolve problems which may arise. Employee's contact information: **Anthony Apodaca, Senior Sales Rep**

The Contractor shall coordinate an informal meeting for certain state agencies and local public bodies on a quarterly basis. Topics may include current market pricing trends, and current issues relating to natural gas pricing; provided, however, that all meetings will be conducted in compliance with any applicable antitrust regulations, and, provided further, that it is understood that Contractor is not acting in the role of consultant and shall not be liable with regard to the provision of any information during or in relation to any such meeting.

2.4 Transportation on Scheduling and Balancing:

Gather gas requirements from the Using Agencies and provide nominations to the transporters. Verify nominations to the facilities.

Take the necessary action to avoid or minimize penalties. The Using State and Local Public Bodies reserves the right to change the nomination at any time of the month, provided that Contractor shall not be liable for any charges that such changes may cause. The Contractor's customer representative shall be available by email to respond to emergency nomination changes.

Provide volume balance management and monitor volumes used. The Contractor will provide the Using State and Local Public Bodies with a written confirmation of the submission of the volume nomination.

The Contractor shall pay any penalties levied, or the extra cost to use LDC replacement gas, but only to the extent that such penalty or cost is due to an imbalance or volume management error directly attributable to the Contractor or resulting from the Contractor's non-compliance with any existing or future regulations or contracts.

2.5 Billing and Reconciliation Services:

The utility is responsible for the integrity of the data. The Contractor will receive the data information from the utility and provide the data information to each contracting entity.

The Contractor shall provide convenient and timely access to monthly energy usage and cost data for each billing meter for all Using Agencies. The Contractor shall provide this information for up to three years of billing history, if available. Eligible recipients of this information are: 1) employees of the customers, and 2) third-party agents of the customers providing written authorization from the customer.

Each written authorization may request data for one or more accounts of a customer. The written authorization shall be signed by an authorized representative employed by the customer's organization and the third-party agent shall be identified. If requested directly by the customer or in the written authorization, the Contractor shall provide the data in electronic form: Microsoft Excel, to the customer or the third-party agent as requested by the customer.

Interstate and Intrastate Transportation/pipeline rates are subject to oversight by the Federal Energy Regulatory Commission (FERC) and New Mexico Public Regulatory Commission (NMPRC) and may be subject to change during the term of this agreement. In the event of a supply cost increase, an escalation request submitted by the Contractor will be reviewed by this office on an individual basis. Please be aware this measure is not intended to allow any increase in profit margin, only to compensate for an actual supply cost increase. In the event of a supply cost decrease due to any such regulatory proceeding, Contractor shall provide written notice to this office and users shall receive the benefit of such reductions. Price increases and decreases per this paragraph will not be retroactive to orders already in house or backorders. Orders will be filled at the price in effect on the date of receipt of the order by the Contractor. Effective dates for increase or decrease will not be any sooner than fifteen days from the date the written request (or notice, in the event of a price decrease) is received by this office. To facilitate prompt consideration, all requests for price increase must include all information listed below, while a price decrease notice shall refer to the Agency and docket number of the proceeding in which such decrease emanated:

1. Requested Item to be increased;
2. current price;
3. proposed new price;
4. percentage of increase;
5. backup documentation supporting the increase.

The Contractor **must** keep track of all entities (state/local governments, K-12 public schools, higher educational institutions, etc.) utilizing this Price Agreement and must be able to produce a report of those entities at any given time.

2.6 Operations Meetings:

Participate in quarterly planning meetings to advise Using Agencies on strategic planning and operational issues, provided that it is understood that Contractor is not acting in the role of consultant and shall not be liable with regard to the provision of any information at any such meeting. The annual report shall be presented at the summer meeting.

A location for this meeting will be made available by the General Services Department, Facilities Management Division. Meeting topics will include as a minimum, current market pricing, future trends, and current issues relating to natural gas pricing, recommendations for purchase. The meetings will be coordinated so that the natural gas purchases for winter months can be made at appropriate times.

The Contractor shall be responsible for inviting state agencies and local public bodies to these quarterly meetings, including those not using the contract at the time of the meeting.

Provide as needed to the state agencies and local public bodies an economic analysis recommendation for utilization of this Contract and recommend appropriate and best opportunities for the use of this contract, provided that it is understood that Contractor is not acting in the role of consultant and shall not be liable with regard to the provision of any such information.

2.7 Procedures Manual:

This Contract involves the procurement and delivery of a natural gas commodity to the entities described herein (for purposes of this Section 2.7, the "contracting entity"). Procedures are defined by the various pipelines and utilities that govern delivery of this commodity to the delivery point specified by the contracting entity and are regulated and defined by tariff, which tariffs are accessible via the Internet from the respective provider/owner of the pipeline, utility and/or transmission service or by obtaining a written copy from the appropriate governing body that regulates said provider/owner.

2.8 Additional Information:

The following listed Contractor supplied personnel shall perform services under this agreement:

James Morin, Director C&I West Region; Anthony Apodaca, Senior Sales Representative; Suzanne Sevit, Regional Client Rep

2.9 Available Pricing Options & Compensation:

The Using Agency shall pay to the Contractor based upon the following available pricing options. Chosen option shall be specified in Appendix H.

- Vendor's Price over Index -Inside FERC, San Juan or Permian, first of the month index plus;
- Fixed Price - May be selected by the end user as opportunities arise. A specific volume will be tied to the purchase price for a specific term. Unit price per MBTU includes all fees. Appendix H will be used to specify MBTU/month and during any billing cycle all natural gas quantities used above the average daily quantities specified will default to the Index Price in Option 1;

Overs and Unders:

San Juan Locations: first of the month Index at San Juan, plus \$.095 per MMBtu, (*supply fee included*) plus NMGC 1% and fees on their system. Loads +/- to the contracted amount will be sold at WACOG plus \$.095 per MMBtu or credited back to you at back at WACOG flat.

Permian Basin Locations: first of the month Index at the Permian, plus \$.12 per MMBtu, plus Intrastate Transport and fuel, plus NMGC 1% and fees on their system. Loads +/- to the contracted amount will be sold at WACOG plus \$.12 per MMBtu plus Intrastate transport and fuel or credited back at WACOG flat.

- Guaranteed percentage savings over NM GAS COMPANY Cost of Gas.

For each of the above cost of gas options, the Contractor shall be reimbursed for expenses as follows:

NM GAS COMPANY line loss of 1%;
NM GAS COMPANY Monthly Access Fee;
NM GAS COMPANY Distribution Charges;
NM GAS COMPANY Transmission Charges;
NM GAS COMPANY RR 8 & 9 Charges discounted for transportation;

Above NM GAS COMPANY rates are subject to oversight by the Public Regulation Commission (PRC) and may be subject to change during the term of this agreement, based on PRC approval.

3. Compensation

The Procuring Agency shall pay to the Contractor the Burner Tip Price, based upon the option we chose to go with, for each Deliverable item as listed here:

| San Juan: | | | | | | |
|------------------|---|---------------|--|--|--|---|
| | | A | B | C | D | F |
| | Price Basis | Index: | Plus, Verifiable Pipeline FUEL Costs %: | Plus, Verifiable Pipeline Costs per MBTU: | Plus, Seller's Charge per MBTU: | Equals, Total Natural Gas Cost: A + (A x B) + C + D: |
| 1) | Over Index: Non-Interruptible Firm Deliveries: | ***** | 0% | N/A | \$.095 | ***** |
| 2) | Fixed Price Strip: | ***** | 0% | N/A | \$.145 | ***** |

| Permian, Transwestern: | | | | | | |
|-------------------------------|---|---------------|--|--|--|---|
| | | A | B | C | D | F |
| | Price Basis | Index: | Plus, Verifiable Pipeline FUEL Costs %: | Plus, Verifiable Pipeline Costs per MBTU: | Plus, Seller's Charge per MBTU: | Equals, Total Natural Gas Cost: A + (A x B) + C + D: |
| 1) | Over Index: Non-Interruptible Firm Deliveries: | ***** | 1.55% | \$.1637 | \$.12 | ***** |
| 2) | Fixed Price Strip: | ***** | 1.55% | \$.1637 | \$.17 | ***** |

| Permian, El Paso: | | | | | | |
|--------------------------|---|---------------|--|--|--|---|
| | | A | B | C | D | F |
| | Price Basis | Index: | Plus, Verifiable Pipeline FUEL Costs %: | Plus, Verifiable Pipeline Costs per MBTU: | Plus, Seller's Charge per MBTU: | Equals, Total Natural Gas Cost: A + (A x B) + C + D: |
| 1) | Over Index: Non-Interruptible Firm Deliveries: | ***** | 2.89% | \$.3631 | \$.12 | ***** |
| 2) | Fixed Price Strip: | ***** | 2.89% | \$.3631 | \$.17 | ***** |

| | | | | | | |
|----|--|-----------|--|--|--|--|
| 3) | Guaranteed Cost Savings Below LDC Tariff Rate | 8% | | | | |
|----|--|-----------|--|--|--|--|

If applicable: tax or taxes shall be added at time of invoicing at current rate, and shown as a separate item to be paid by user.

The following minimum items will be expected on invoice:

- a) Quantity of gas nominated by the facility.
- b) Quantity of gas delivered to the city gate.
- c) Cost of natural gas per unit delivered to the city gate.

- d) Contractor's charge per unit of natural gas delivered to the city gate.
- e) Adjustments made as a result of Contractor balancing error.
- f) The final total bill to be paid.

4. Payment Provisions

All payments under this Agreement are subject to the following provisions:

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the agency shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted in writing by the procuring agency. Unless otherwise agreed upon between the procuring agency and the Contractor, within fifteen (15) days from the date the procuring agency receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the procuring agency shall issue a written certification of complete or partial acceptance or rejection of the products or services. Unless the procuring agency gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.
- B. Issuance of Orders - Only written signed orders are valid under this Price Agreement. A Purchase Order is the approved form for state agencies issuing Contract Orders under this Price Agreement. Other authorized government entities may utilize Purchase Orders or forms adapted by them for their own use.
- C. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The Procuring Agencies and the State agree to pay in full the balance shown on each account's statement, by the due date shown on said statement.
- D. Late Charges: If the State fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than 60 days. Late fees will be assess at a rate based upon the billing address of each State or Procuring Agency account; therefore, the periodic (monthly) late fee rate shall be 1.5% and the corresponding Annual Percentage Rate for the State of New Mexico will be 18%. No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

5. Term

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on date approved by the State Purchasing Agent and end on May 11, 2023. The agency reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of 8 years in accordance with NMSA 1978 §13-1-150.

6. Default and Force Majeure

The State reserves the right to cancel all or any part of any orders placed under this Statewide Price Agreement without cost to the State, if the Contractor fails to meet the provisions of this Statewide Price Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Statewide Price Agreement.

7. Termination

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraphs 7.A and 17, the Agency shall give Contractor written notice of termination at least sixty (60) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least ninety (90) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

8. **Amendment**

This Price Agreement may be amended by mutual Agreement of the State Purchasing Agent and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon, and as published by the State Purchasing Agent. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the bid and contract documents.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the agency and are not employees of the State of New Mexico. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

A. Neither this price Agreement nor any orders placed under this price Agreement, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Contractor, except as set forth in subparagraph 10B below or as expressly authorized in writing by the State Purchasing Agent's office. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this price Agreement.

B. Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.

11. **Subcontracting**

The Contractor shall not subcontract any portion of any services to be performed under this Agreement without written approval from the State Purchasing Agent.

12. **Non-Collusion**

In signing this Agreement, the Vendor/Contractor certifies the Vendor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

13. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any

customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

14. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the agency, the State Auditor and other appropriate state and federal authorities. The agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the agency to recover excessive or illegal payments.

15. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the agency to the Contractor. The agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

16. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

17. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the procuring agency.

18. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the

effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Paragraph .

19. **Approval of Contractor Representative(s)**

The agency reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the agency, adequately serving the needs of the State of New Mexico.

20. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

21. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

22. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

23. **Indemnification**

The Contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not

be liable for any injury or damage as a result of any negligent or willful act or omission committed by the agency, its officers or employees.

24. **New Mexico Employees Health Coverage**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

25. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

26. **Limitation of Liability**

The Contractor's liability to the agency, or any procuring agency, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the agencies, or the procuring agencies, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

27. **Arbitration**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

28. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for

proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or agency or entity; and (5) the Contractor's response to the request for proposals.

29. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the agency.

30. **Inspection of Services**

This Statewide Price Agreement is for the purchase of a natural gas commodity. State and federal guidelines warranty the pipeline quality of the natural gas purchased hereunder and inspection is relative to the regulated pipeline or utility that provides the transmission and distribution services. The Contractor has no control, responsibility or management of such quality, therefore, the act of inspection would neither be relevant or applicable in a commodity-only contract as it pertains to the Contractor. Gas quality specifications can be obtained from the regulated pipeline or utility from which the gas purchased hereunder is obtained.

THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PURCHASING AGENT'S OR OTHER PARTY'S TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

31. **Insurance**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Statewide Price Agreement). Limits shall not be less than the following:

a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.

- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

32. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

33. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

34. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

35. **Survival**

Any other unexpired agreements that were entered into under the terms and conditions of this Contract shall survive this Contract.

36. **Employee Pay Equity Reporting**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Statewide Price Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If Contractor has (250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or

PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should Contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding the foregoing, if this Statewide Price Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

37. **Disclosure Regarding Responsibility**

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph B of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if

the following criteria apply.

- a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
- b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
- c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)

B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

38. **Public Works Minimum Wage Act**

A. If this Statewide Price Agreement is in excess of sixty thousand dollars (\$60,000) and is for construction alteration, demolition or repair (or any combination of these including painting and decorating of state public buildings, state public works or state public roads and requires or involves the employment of mechanics, laborers or both), the requirements of the Public Works Minimum Wage Act, as set forth in Sections 13-4-10 through 13-4-17 are hereby incorporated into this Statewide Price Agreement.

B. The minimum wages and fringe benefits to be paid to various classes of laborers and mechanics at all tiers under this Statewide Price Agreement shall be based upon the wages and benefits determined by the Director of the Labor Relations Division of the New Mexico Department of Workforce Solutions at the time of individual contract award under the authority of Sections 13-4-10 through 13-4-17 NMSA 1978. Using Agencies are responsible for contacting the Labor Relations Division for the current wage rate decision applicable to any resultant contract issued under this agreement and incorporation therein.

C. Such incorporated Wage Decision shall stipulate the Contractor, Subcontractor, Employer, or person acting as Contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Subsection B of Section 13-4-11 NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

D. The Contractor receiving any such award to which the Act applies shall cause this provision to be placed in all subcontracts awarded by Contractor.

E. In the event during performance under this Statewide Price Agreement, if the Director of the Labor Relations Division makes a written finding that any laborer or mechanic employed on the site of the project has been or is being paid as a result of a willful violation a wage rate or fringe benefit rate less than the rates required, the contracting Agency may, by written notice to the Contractor, subcontractor, employer or person acting as a Contractor, terminate the right to proceed with the work or part of the work as to which there has been a willful violation to pay the required wages or fringe benefits, and the contracting Agency may prosecute the work to completion by contract or otherwise, and the Contractor or person acting as a Contractor and the Contractor's or person's sureties shall be liable to the State for any excess costs occasioned thereby. Any party receiving notice of termination of a project or subcontract may appeal the finding of the Director of the Labor Relations Division as provided in the Public Works Minimum Wage Act.

39. **Suspension, Delay or Interruption of Work**

The State Purchasing Agent or other party to this Agreement may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the State Purchasing Agent or other party to this Agreement may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe

condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

40. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

| | |
|---|---|
| To agency: | Lawrence O. Maxwell, State Purchasing Agent |
| Office address: (for express carrier and hand deliveries) | 1100 South St. Francis Drive Joseph M. Montoya Building, Rm. 2016 Santa Fe, New Mexico 87505-4108 (505) 827-0472 (voice) (505) 827-2484 (fax) Lawrence.maxwell@state.nm.us |
| To Contractor: | Continuum Retail Energy Services, L.L.C. |
| Correspondence Address: | Attn: Jim Morin, Director C&I West Region 303 East 17 th Ave Suite 850 Denver, CO 80203 |
| Email: | jmorin@ContinuumES.com |
| Phone Numbers: | 720-214-5820 (p) 406-781-6529 (c) |

41. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

42. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

STATE OF NEW MEXICO
General Services Department

Continuum Retail Energy Services, L.L.C.

BY: [Signature]

BY: [Signature]

TITLE: Business Chief

TITLE: Director

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

TAXATION AND REVENUE DEPARTMENT

ID NO.: 03-250120-000

BY: [Signature]

DATE: 5/6/15

This Agreement has been approved by the State Purchasing Agent of New Mexico:

[Signature]
State Purchasing Agent

5/6/15
Date

Appendix H
CONFIRMATION AGREEMENT ISSUED UNDER
NATURAL GAS MARKETING STATEWIDE PRICE AGREEMENT 50-000-15-00049

| | |
|--------------------|---|
| Buyer: | Seller: Continuum Retail Energy Services, L.L.C. |
| Tel: | Tel: |
| Email: | Email: |
| Fax: | Fax: |
| Contact: | Contact: |
| Tax ID No.: | Tax ID No.: |

Buyer and Seller confirm the following transaction between Buyer and Seller pursuant to the Natural Gas Sales Agreement identified above:

Confirmation Date: _____ **Period of Delivery:** _____ **through:** _____

Purchase Price (Select One):

- First of the month Index Price at San Juan plus \$.095 MMBTU plus posted tariff rate transportation cost and fuel, 1% fuel, and fees on NMGC's system.
- First of the month Index Price Permian plus \$.12 MMBTU plus posted tariff rate transportation cost and fuel, 1% fuel, and fees on NMGC's system.
- Fixed price San Juan: \$_____ per MMBTU; plus posted tariff rate transportation cost and fuel, 1% fuel, and fees on the NM GAS COMPANY system.
- Fixed price Permian: \$_____ per MMBTU; plus posted tariff rate transportation cost and fuel, 1% fuel, and fees on the NM GAS COMPANY system.
- Guaranteed Percentage Savings 8% (as defined in the Natural Gas Agreement)

Point(s) of Delivery: NM GAS COMPANY City Gate. NM GAS COMPANY will transport to the Entity's facility on the Contractor's NM GAS COMPANY contract.

Overs and Unders:

San Juan Locations: first of the month Index at San Juan, plus \$.095 per MMBtu, (*supply fee included*) plus NMGC 1% and fees on their system. Loads +/- to the contracted amount will be sold at WACOG plus \$.095 per MMBtu or credited back to you at back at WACOG flat.

Permian Basin Locations: first of the month Index at the Permian, plus \$.12 per MMBtu, plus Intrastate Transport and fuel, plus NMGC 1% and fees on their system. Loads +/- to the contracted amount will be sold at WACOG plus \$.12 per MMBtu plus Intrastate transport and fuel or credited back at WACOG flat.

Buyer: _____ **Date:** _____

Seller: _____ **Date:** _____

CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: CONTINUUM RETAIL ENERGY SERVICES, LLC

Procurement Title: NATURAL GAS PROVIDER

Solicitation RFP/RFB#: STATE PRICE AGREEMENT 50-000-15-00049

Other Methods: State Price Agreement *Cooperative* *Sole Source* *Exempt* *Other* *SPA*

Department Requesting/Staff Member PUBLIC UTILITIES DEPARTMENT/DIRECTOR

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids and proposals, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the procurement officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .

SOLICITATION*

- | YES | N/A | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Project Beginning History (council requests etc) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Budget Determination (FIR) attach |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Solicitation document (RFP, IFB), |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Screen print of legal solicitation published in newspapers, web sites, etc.: |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Screen print of addendum(s) published on the IPB/RFP: |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Pre-Bid/Pre-Offer Conference attendance sheet and other documents |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | If canceled, screen print of cancellation of solicitation notice |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

EVALUATION*

- | YES | N/A | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Blank evaluation form |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Evaluator's names and profiles |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Evaluation procedures or evaluation instructions |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Conflict/Confidentiality Forms signed by all Evaluators, Technical Advisors, Reviewers, and any person who assists in regard to the bid/proposal, evaluation and/or award |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Bid or Offer opening sheet(s) (If RFP, then two offer opening sheets, one for technical and one for cost) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Screen print of Bidder/Offeror's detailed information |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Responsiveness review sheet or other sheet documenting responsiveness for each Bidder/Offeror, attach requests for additional information to cure items |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Non-Responsive/Non-Responsibility Form and correspondence or letters from Department to vendor regarding disqualifications |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Oral presentations (sign-in sheets, presentation materials, etc.) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Documentation sent to Bidders/Offerors and responses received regarding clarifications, decisions, negotiations, and/or best and final offers, etc. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Reference Reviews/Reference Check Questionnaires |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Individual evaluations included for each RFP. |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Pricing evaluation |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Final overall evaluation matrix or summary of evaluator scores |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other: _____ |

*

AWARD*

YES N/A

- X Fully executed Memo to Committees from the Department with recommendation of award
- X Winning proposal (this is a copy that has all confidential/proprietary information excluded)
- X Screen print of Contract Award Notice
- X Screen print of Award Notice published on agency website
- X Email or notification sent to all Bidders/Offerors that award was made
- X Waiver or "No Action Taken" from Procurement Office
- X Correspondence with Procurement Office regarding waiver
- X If IFB and not awarded to lowest responsive, responsible bidder; written explanation
- X Other: STATE PRICE AGREEMENT 50-000-15-00049_____

DISCLOSURES

YES N/A

- X **Contractor Disclosures & Conflicts of Interest**
- X Disclosures & Conflicts of Interest Form(s) (winning bidder(s)/offeror(s))
- X **Contractor –Conflicts of Interest**
- X Purchasing Office Letter or e-mail to designated individual regarding potential conflict
- X Conflict of Interest Form signed by all parties
- X Letter from Procurement Office regarding the potential conflict
- X **Subcontractor Disclosures**
- X Disclosures & Conflicts of Interest form of Subcontractor(s)
- X **Subcontractor –Conflicts of Interest**
- X Purchasing Officer Letter or email to designated individual regarding potential conflict
- X Conflict of Interest form signed by all parties
- X Letter from Legal Office regarding the potential conflict
- X Other: _____

CONTRACT

YES N/A

- X Copy of Executed Contract
- X Copy of all documentation presented to the Committees
- X Finalized Council Committee Minutes
- X Other: _____

MISCELLANEOUS FILE*

YES N/A

- X Local Preference Form
- X New Mexico Residence Form
- X Veterans Exemption
- X Sole Source determination form approved by Procurement Officer
- X Exempt determination memo approved by Procurement Officer
- Other: _____

Include all other substantive documents and records of communication that pertain to the procurement and any resulting contract.

PROTEST (If applicable)*

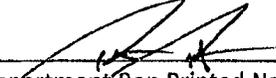
YES N/A

- Documentation from protester filed with the Purchasing Office
- Letter from Department to Purchasing Office Providing response to protest
- Letter from Purchasing Officer to protester and Department on final outcome
- Other: _____

Create a separate file folder which may contain any documents with trade secrets or other competitively sensitive, confidential or proprietary information.

YES N/A

- Original bid(s) or proposal(s) with no redactions.
- Documentation exempt - Proprietary, Confidential, Competitively Sensitive, or Trade Secret (i.e. e-mails, proposals, letters)



Department Rep Printed Name and Title



Department Rep Signature attesting that all information included



Purchasing Officer attesting that all information is reviewed