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

DEPARTMENT: **Mass Transit (Sun Metro)**

AGENDA DATE: **April 2, 2019**

CONTACT PERSON/PHONE: **Jay Banasiak, Mass Transit (Sun Metro), (915) 212-3300**

DISTRICT(S) AFFECTED: **1 and 2**

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

SUBJECT:
Board authorization of an agreement to allow the County Transit Service to fuel its fleet of CNG buses, currently 2, at either Sun Metro facility, Union Depot or Transit Operations Center (TOC). Once function is licensed by the State, Sun Metro will charge its per gallon fuel cost plus an additional ten cents for each gallon consumed.

BACKGROUND / DISCUSSION:
The County's acquisition of CNG vehicles was accomplished through a grant from the TXDOT but the County does not currently have CNG fueling facilities available to fuel these vehicles. Both Sun Metro and the County are interested in entering into an agreement in which the County's vehicles may receive CNG fuel from Sun Metro's Montana and Downtown facilities in furtherance of the development of additional public transportation options for the El Paso region, and such cooperation is deemed a public benefit for the region. Chapter 791 of the Texas Government Code authorizes local governments to enter into interlocal contracts to provide governmental services.

SELECTION SUMMARY:
N/A

PRIOR COUNCIL ACTION:
Similar agreement was signed in April, 2007.

AMOUNT AND SOURCE OF FUNDING:
Revenue generating

BOARD / COMMISSION ACTION:
N/A

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

DEPARTMENT HEAD: _____

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

FUELING AGREEMENT

This Fuel Agreement (the "Agreement") is entered into this _____ day of _____ 2018 (the "Effective Date"), by and between the City of El Paso, Texas acting by and through its Mass Transit Department Board ("Sun Metro") and the County of El Paso, Texas ("County").

WHEREAS, the County owns two vehicles that require compressed natural gas (CNG) fuels and is used for public transportation purposes in El Paso County; and

WHEREAS, the County's acquisition of such vehicle was accomplished through a grant from the Texas Department of Transportation (TxDOT), but the County does not currently have CNG fueling facilities available to fuel these vehicles; and

WHEREAS, Sun Metro does currently have CNG fueling facilities at the Sun Metro Bicentennial Council Transit Operations Center, located at 10151 Montana Ave, El Paso, TX. 79925, ("Montana") and at the Sun Metro Union Plaza Transit Terminal, located at 400 W San Antonio Ave, El Paso, TX. 79901, ("Downtown") sites, which the parties believe is adequate for fueling the County's new vehicles; and

WHEREAS, Sun Metro and the County are interested in entering into an agreement in which the County's vehicles may receive CNG fuel from Sun Metro's Montana and Downtown facilities in furtherance of the development of additional public transportation options for the El Paso region, and such cooperation is deemed a public benefit for the region;

WHEREAS, Chapter 791 of the Texas Government Code authorizes local governments to enter into interlocal contracts to provide governmental services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

1. TERM. The initial term of this Agreement shall be a 5 year period from the Effective Date, subject to the termination provisions noted herein. In addition to the initial term, the County shall have two (2) additional, one (1) year options to extend this Agreement. The County may exercise the first option by notifying Sun Metro in writing of the County's election at least thirty (30) days prior to the expiration of the initial term. Similarly, to exercise the second term, the County shall provide written notification to Sun Metro at least thirty (30) days in advance of the expiration of the first option period. In the event these options to extend are so exercised, this Agreement shall be extended on the same terms and conditions as noted herein, subject to any applicable amendments. The City Manager may waive the advance notice requirements in this Agreement.

2018-0819

2. DESCRIPTION OF SERVICES. Sun Metro shall provide fueling services to the County pursuant to and in accordance with the fueling procedures attached to this Agreement and incorporated herein for all purposes as **ATTACHMENT A**. It is expressly agreed and understood that the services to be provided by Sun Metro shall be strictly limited to fueling services. Further, the parties agree that Sun Metro shall handle all such fueling services, and that County employees shall not fuel the vehicle. The County will retain any and all maintenance and other responsibilities relative to the operation of the referenced CNG vehicles. The attached fueling procedures may be adjusted during the term of this Agreement by mutual consent in writing of the respective Directors of Sun Metro and the County's transit program. This Agreement shall be limited solely to the CNG vehicles' fueling at the locations described herein. Notwithstanding anything to the contrary, but subject to paragraph 14, the County agrees that the City is not responsible for any property damage, injury to person, or death sustained by the County resulting from the services provided by the City under this Agreement regardless of whether such property damage, injury to person, or death is a result of a negligent act or omission from the City or its employees, agents, or officers.

3. INVOICING AND PAYMENTS. Sun Metro will invoice the County's contractor by the 15th of each month for the amount of the CNG fuel that is provided to the County's vehicle for the immediately preceding calendar month. Sun Metro will send an invoice to the following address, or other address as submitted in writing by the County:

First Transit,
Attn: Sylvia Ancira, CCTM,
PO Box 920451
El Paso, Texas 79902

In establishing the invoice amount, Sun Metro will use the rate charged for the latest delivery in the month (or an average of rates if more than one deliveries were provided in the month) and will add **TEN CENTS ($0.10) PER GALLON** to the cost, to cover Sun Metro's maintenance and overhead expenses. If requested, Sun Metro shall submit to the County the calculations used to arrive at the invoiced amount.

The County will cause its contractor to make payments on all Sun Metro invoices within thirty (30) calendar days of the date of the invoice. Payments should be sent to:

Sun Metro Bicentennial Council Transit Operations Center
10151 Montana Ave.
El Paso, Texas 79925

In the event that the County's contractor does not pay an invoice as provided in this section, then the City will send an invoice to the County. The County will pay an invoice from the City within 30 calendar days of the date of the invoice. The County will send all payments to the address in this Section above.

4. INDEPENDENT CONTRACTORS. The parties are independent contractors. No partnership or joint venture is intended or is created by this Agreement, nor any principal-agent or employer-employee relationship. Except as may be expressly provided in this Agreement,

neither party has, and neither party shall attempt to, asserted the authority to make commitments for or to bind the other party to any obligation. No separate legal or administrative entity shall be created by this Agreement.

5. PUBLIC PURPOSE. This Agreement is between Sun Metro and the County for the purpose of coordinating the provision of public transportation services and not for the benefit of any third party or individual. The coordination of transportation efforts in the El Paso region as contemplated herein is deemed a public purpose.

6. GOVERNMENTAL FUNCTION. The parties expressly agree that, in all things relating to this Agreement, the parties are governmental entities and are performing governmental functions, as defined by the Texas Tort Claims Act. The parties further expressly agree that every act or omission of any party, which in any way, pertains to or arises out of this Agreement falls within the definition of governmental function.

7. TERMINATION FOR CONVENIENCE. If either party determines that it can no longer participate in the requirements of this Agreement for any reason, that party shall notify the other party in writing at least **thirty (30) days** in advance of its intent to withdraw from this Agreement and terminate its participation in the activities required hereunder. Such termination shall become effective upon the thirty-first (31st) day after receipt of such notice.

8. NOTICES. All notices provided under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

Sun Metro:	Deputy City Manager for Public Works City of El Paso 300 N. Campbell El Paso, Texas 79901	Copy to: Director Mass Transit Department 10151 Montana Ave. El Paso, Texas 79925
County:	Transportation Program Engineer El Paso County 800 E. Overland, Rm. 200 El Paso, Texas 79901	

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

9. SEVERABILITY. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

10. AGREEMENT MADE IN WRITING. This Agreement contains all of the

agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by amendment in writing signed by the parties hereto or their respective successors in interest.

11. AGREEMENT MADE IN TEXAS. This Agreement is made in the State of Texas and the laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts of El Paso County, Texas.

12. PARAGRAPH HEADINGS. The captions of the various sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

13. INSURANCE. Prior to obtaining any services under this Agreement, the County will provide, or cause its contractor to provide, comprehensive automobile liability insurance in the minimum coverage amounts of $1,000,000. The County will provide the City copies of all endorsements and insurance certificates. If requested by the City, then County will provide the City a copy of the insurance policy in order to verify compliance with the insurance requirements in this Agreement. The insurance must provide coverage for any acts or omissions of the County's contractors and agents. The County shall maintain such insurance for the term of this Agreement. The County may use insurance by the County's contractors to satisfy the insurance requirements under this Agreement, provided that such insurance meets all the requirements in this Agreement. If the County ceases to use a contractor for the operation of the County's vehicles, then the County will immediately provide the City an insurance policy as required under this Agreement.

The County shall furnish Sun Metro with current proof of such insurance minimum requirements showing the type, amount, class of operations covered, effective dates and dates of expiration of policy. Sun Metro shall be named as an Additional insured on the insurance policy required by this Agreement. Such insurance certificate shall also contain a requirement that such policy will not be canceled or materially altered, except after **thirty (30) consecutive calendar days** written notice of intent to cancel or materially alter said insurance. The County shall provide Sun Metro with immediate notice of any such notice of alteration or cancellation.

14. INDEMNIFICATION. To the extent allowed by law, and with the mutual understanding that the County has not established an interest and sinking fund, the County shall indemnify, defend, and hold harmless Sun Metro, its directors, officers, employees, agents, attorneys, representatives, successors and assigns, from any and all claims demands, costs, expenses (including attorney's fees and expert witness fees), liabilities and losses of whatsoever kind or character arising out of or in connection with any act or omission of Sun Metro, its directors, officers, employees, agents, attorneys, representatives, successors and assigns in connection with the fueling services contemplated by this Agreement. The County shall assume on behalf of Sun Metro, its directors, officers, employees, agents, attorneys, representatives, successors and assigns, and conduct with due diligence and in good faith, the defense of any and all such claims, whether or not Sun Metro is joined therein, even if such claim or demand is groundless, false or fraudulent. Upon the receipt of notice of the existence of any such claim or

demand that would result in a claim for indemnification hereunder, Sun Metro agrees to send written notice of such claim or demand to the County.

15. ASSIGNMENT. Neither party shall assign the whole or any part of this Agreement, or any funds due or to become due hereunder, without written consent of the other.

16. SUCCESSORS AND ASSIGNS. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Sun Metro and the County and their successors, assigns, legal representatives, heirs, executors and administrators.

17. INTERPRETATION. The parties agree that this Agreement has been freely negotiated by each party and that in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement, there shall be no inference, presumption, or conclusion drawn whatsoever for or against any party by virtue of that party having drafted the Agreement.

18. SIGNATORIES. Each person signing this Agreement on behalf of either party represents and warrants that he or she has the authority to legally bind their respective entity to the provisions hereof and that the representations made to the other party as inducement to enter into this Agreement are still true and correct.

19. PAYMENTS. Each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

20. ENTIRE AGREEMENT. This Agreement, together with all attachments hereto, constitutes the entire agreement between the parties, and all other representations or statements heretofore made, verbal or written, are merged herein.

THE CITY OF EL PASO MASS TRANSIT DEPARTMENT

_____
Dee Margo
Chairman

APPROVED AS TO FORM:

_____
Omar A. De La Rosa
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Jay Banasiak, Director
Mass Transit Department

[County signatures begin on the following page]

THE COUNTY OF EL PASO

Richard Samaniego
County Judge

APPROVED AS TO FORM:

Kevin McCary
Assistant County Attorney

APPROVED AS TO CONTENT:

Sal Alonzo
Transportation Program Engineer
El Paso County Transit

[Attachment A begins on following page]

ATTACHMENT "A"

COUNTY REFUELING PROCEDURES AT SUN METRO'S MONTANA AND DOWNTOWN FACILITIES

- **COUNTY EMPLOYEES WILL NOT BE ALLOWED TO REFUEL THEIR OWN VEHICLE AT ANY TIME. ONLY SUN METRO EMPLOYEES SHALL DISPENSE FUEL AT THE FRED WILSON OR UNION DEPOT FACILITY.**

- The County may not bring passengers into the Sun Metro Bicentennial Council Transit Operations Center, located at 10151 Montana Ave, El Paso, TX. 79925, ("Montana") or into the Sun Metro Union Plaza Transit Terminal, located at 400 W San Antonio Ave, El Paso, TX. 79901, ("Downtown") fueling facilities when fueling. The County vehicle's operator (the "Operator") will ensure that there are no persons on-board the vehicle during the refueling process, including the operator and any passengers. After vehicle is staged, shut off and secured at the fuel pump the Operator will exit and give all of the necessary vehicle information to the refueler and wait for the vehicle to be refueled away from the refueling process. This is a safety issue and must be adhered to at all times.

- Sun Metro's refueling employee will not be responsible for checking any of the fluids levels in the engine compartment of the vehicle, as Sun Metro's activities shall be strictly limited to refueling. If the Operator is required to check fluids he/she should wait until all the refueling process is completed and move the vehicle away from the refueling island to a location authorized by Sun Metro. The Operator shall then shut the vehicle off and secure the vehicle. Only then may the Operator proceed to check the fluids of the vehicle. If the County vehicle needs additional fluids to be topped off the operator should have all the necessary tools and fluids with them at the time of refueling. Sun Metro shall not provide any tools, fluids or other assistance for the County vehicle.

- Sun Metro will not stock any fluids required for the County vehicle(s) with the exception of natural gas fuel.

- Refueling will be performed at the Sun Metro's Montana and Downtown Facilities. The Operator will enter the Facilities only from Montana Ave. or San Antonio Ave. (respectively) and not exceed the posted 5 M.P.H. speed limit at anytime while the County vehicle is on the Facility's property.

- After entering either of the Facilities the Operator will proceed to the refueling area. In the event there are other vehicles being refueled, the Operator shall wait in-line. No

additional priority will be given to the County vehicle outside the first come first served process.

- Refueling will be available to the County from Monday through Friday 5:00 a.m. to 10:00 p.m., but will be limited to those days and at times as agreed upon by the County and the Director from time to time. The County agrees to fuel on those days and at those times that cause minimal disruption to Sun Metro operations, which may include fueling in late evening or early morning.

- If Sun Metro's refueling employee is not at the refueling pumps when the Operator arrives at either Facility, the Operator will shut off and secure his/her vehicle at the refueling pumps and walk to the maintenance building to make contact for assistance. At no time should the Operator drive the county vehicle to the maintenance facility to make contact. This causes increased risk for an accident.

- The Operator shall print and sign his/her name on the Sun Metro refueling record. Likewise, the Sun Metro refueler must print and sign his/her name on any applicable County records.

- At no time during the refueling process or otherwise should the Operator loiter, interrupt or otherwise disrupt the maintenance or operational activities at either Facility.

(END OF ATTACHMENT)