

NATURAL GAS PURCHASE AND SALE AGREEMENT

This Agreement (“Agreement”) is made and entered into by and between Nopetro-Tallahassee LLC, a Florida limited liability company (“Buyer”), and the City of Tallahassee, a Florida municipal corporation (“Seller”).

Witnesseth:

WHEREAS, Seller operates a Gas distribution system in and around Leon County, Florida, and makes direct sales of Gas for the use of industrial and commercial customers;

WHEREAS, Buyer, as owner and operator, intends to construct a certain industrial/commercial CNG fueling facility in Seller’s service area (“Facility”) and desires to purchase Gas from Seller in order to produce CNG fuel for vehicular use;

WHEREAS, Seller intends to consider transitioning a portion of its Dial-a-Ride shuttle bus, refuse, transit bus, maintenance and utility vehicle fleets to use compressed natural gas as a fuel source; and

WHEREAS, in furtherance of the efficient, cost-effective and reliable performance of its governmental purpose and essential functions, Seller desires to purchase from Buyer CNG service for CNG-fueled Dial-a-Ride shuttle buses, refuse trucks, transit buses, maintenance and utility vehicles, and other vehicles owned, leased and/or operated by Seller.

In consideration of the mutual covenants hereinafter expressed, Buyer and Seller hereby agree as follows:

1.0 Definitions: The following definitions shall apply to this Agreement:

- 1.1 “CNG” shall mean compressed natural gas.
- 1.2 “DGE” shall mean diesel gallon equivalent.
- 1.3 “GGE” shall mean gasoline gallon equivalent.
- 1.4 “Gas” shall mean natural gas.
- 1.5 “psig” shall mean pounds per square inch gauge.
- 1.6 “BTU” shall mean British Thermal Unit, the amount of heat required to raise the temperature of one (1) pound of water (at sixty (60) degrees Fahrenheit) by one (1) degree Fahrenheit.
- 1.7 “MMBtu” shall mean one million BTUs.
- 1.8 “Person” shall mean a natural person, corporation, partnership, limited partnership, limited liability company, business trust, governmental entity or authority, association or other legal entity.
- 1.9 “Point of Delivery” shall mean at the outlet side of such meter or meters as installed by Seller upon Buyer’s property.
- 1.10 “Seller’s CNG Vehicles” shall mean CNG-fueled Dial-a-Ride shuttle buses, refuse trucks, transit buses, dump trucks, maintenance and utility vehicles, automobiles and other vehicles owned, leased or operated by Seller.

2.0 Natural Gas Purchase and Sale:

- 2.1 For the term of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase exclusively from Seller, Gas for Buyer's use in providing CNG fueling services pursuant to applicable provisions of the City of Tallahassee Code. Such Gas shall be delivered at a minimum of 120 psig (+/- 2 psig) at the Point of Delivery.
- 2.2 For purposes of this Agreement, Seller shall deliver and Buyer shall receive and accept Gas at the Point of Delivery. All Gas received at said Point of Delivery shall be odorized.
- 2.3 Buyer agrees to purchase a minimum annual quantity of Gas equivalent to 175,000 DGEs for the first seven (7) years of this Agreement.

3.0 CNG Purchase and Sale:

- 3.1 For the term of this Agreement, and subject to Section 3.3, Seller agrees to purchase exclusively from Buyer, and Buyer agrees to sell to Seller, CNG fuel requirements for Seller's CNG Vehicles for the term of this Agreement. The purchase price for such CNG fuel shall be the lesser of (i) the lowest price charged by Buyer to any other purchaser of CNG fuel, or (ii) a purchase price computed as follows:

Price per DGE = Commodity Cost per DGE + Compression Fee per DGE
Compression Fee per DGE shall be determined as follows:

- Less than 15,000 DGE = \$1.40
- 15,00 – 30,000 = \$1.20
- 30,001 – 40,000 = \$1.10
- More than 40,000 = \$0.95

Buyer shall invoice Seller, no later than the 10th day of each month, for CNG fuel dispensed to Seller during the preceding month. The Compression Fee per DGE shall be based on the total quantity of CNG fuel dispensed to Seller during the month. Seller shall remit payment of undisputed amounts invoiced by Buyer within thirty (30) days after receipt of Buyer's invoice.

- 3.2 In addition to paying the Compression Fee due for the purchase of CNG, Seller shall be liable for and, unless otherwise exempt, shall pay all taxes, surcharges, and other charges, if any, assessed by any federal, state, or local governmental entity relating to the purchase of CNG.
- 3.3 For purposes of the Agreement, Buyer shall dispense CNG fuel to Seller at the Facility.

3.4 Notwithstanding anything in this Agreement, Seller may continue to dispense CNG fuel to Seller's CNG Vehicles at its two (2) currently operational Time- Fill CNG fuel systems, one being located at 2602 Jackson Bluff Road, Tallahassee, Florida, and the other being located at the City's Fleet Management facility (400 Dupree Street, Tallahassee, Florida. Seller shall not expand the capacity, output, or other capabilities of said systems and must purchase from Buyer all of its CNG fuel requirements which exceed the level of output and capacity of said systems.

4.0 Royalty:

4.1 Seller commits to encourage its vendors and service providers to transition their fleets to use CNG fuel and use Buyer's Facility in future procurement opportunities. Buyer shall pay to Seller a royalty of 5 cents per DGE of CNG fuel consumed at the Facility by such vendors and service providers, as identified by Seller.

5.0 Seller's CNG Vehicles:

5.1 In the event Seller makes a decision to completely privatize, outsource or otherwise contract for performance of all activities then provided by Seller in regard to a particular service area (e.g., Dial-a-Ride services, solid waste collection services, or mass transit services) Seller will require the Person contracting to provide such services to acquire, through purchase, lease or otherwise, Seller's CNG Vehicles used exclusively in providing such services.

6.0 Term of Agreement:

6.1 The initial term of the Agreement is five (5) years, commencing on the date the Agreement is executed. If this Agreement has not been terminated in accordance with its terms prior to the fifth (5th) anniversary of such date, the term of this Agreement shall automatically continue, absent an Event of Default and prior termination by the non-defaulting Party, until either Party elects to terminate this Agreement by providing the other Party two- (2-) years prior written notice of termination, in which case this Agreement shall terminate on the second (2nd) anniversary of the date of such notice.

7.0 Purchase Price of Natural Gas Hereunder:

7.1 The price to be paid by Buyer to Seller for Gas delivered to Buyer shall be determined in accordance with Section 21-457 – Compressed Natural Gas Vehicle Refueling Service, and Section 21-460 – Annual Adjustment, City of Tallahassee Code.

7.2 In addition to paying all amounts otherwise due for the purchase of Gas, Buyer shall be liable for and, unless otherwise exempt, shall pay all taxes, surcharges,

and other charges, if any, assessed by any federal, state, or local governmental entity relating to the transactions or services provided.

8.0 Billing and Payment:

8.1 Billings for Gas shall be rendered monthly. Payment in full of the invoice amount shall be made by Buyer in accordance with, and subject to, the provisions of Section 21-182, City of Tallahassee Code. All billings will set forth clearly and in detail, the facts required to calculate the amount stated as due, including metered quantities supplied and the rates at which charged.

9.0 Transportation:

9.1 Seller will negotiate and arrange all transportation and delivery contracts necessary for delivery of Gas to Buyer.

10.0 Title to Natural Gas:

10.1 Title to, and risk of loss of, Gas delivered pursuant to this Agreement will pass from Seller to Buyer at Point of Delivery.

10.2 Seller warrants that it has good right to sell the Gas being sold to Buyer under the terms hereof, and that such Gas is free from all claims by any owner of any interest in the same, and agrees to hold Buyer harmless and defend Buyer from any claim or demand by any other party.

11.0 Measurement and Measuring Equipment:

11.1 Measurements on Seller's meter or meters shall be conclusive on both parties except where the meter is defective or fails to register, in either of which case Seller, at its own expense, shall repair or replace the meter within a reasonable time consistent with applicable industry standards. If the meter is found to be defective or fails to register, the quantity of Gas delivered while the meter was out of order or failed to register shall be estimated to the satisfaction of both Buyer and Seller as follows:

- (a) By using the registration of any check meter (including Buyer's) if installed and accurately registering or, in the absence of (a),
- (b) By correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation, or, in the absence of both (a) and (b),
- (c) By estimating the quantity supplied from deliveries during periods under similar conditions when the meter was registering accurately.

Buyer may install, maintain, and operate, at its expense, such operating equipment, pressure regulators and check measuring equipment as Buyer shall desire; provided however, that such equipment shall not be installed or operated in a manner that would affect the accuracy or operation of Seller's measurement equipment. Seller shall have access to Buyer's check measuring equipment at reasonable hours, but shall have no responsibility for the reading, calibrating, or adjusting thereof, or for any changing of charts.

12.0 Non-Compete:

12.1 Seller, during the term of this Agreement, agrees that it will not offer, contract or agree to re-sell, trade, exchange or otherwise sell CNG to third parties; however, Seller reserves all rights to sell Gas to other parties for use in producing CNG fuel for their own use or for resale.

13.0 Easement:

13.1 Seller has been granted certain easements for the installation of a metering station and other facilities to be used in supplying Gas to Buyer under this Agreement. Sellers' obligations under this Agreement are contingent on Seller's obtaining all amendments to such easements, and all other documentation, as Seller, in its discretion, may require to ensure the continuation of the rights of Seller under such easements. It is expressly understood and agreed that, as a concern for safety and in order to comply with certain federal laws and regulations, Seller shall not change the location of any metering stations or other facilities, nor shall it access Buyer's property or leasehold, except that which may be subject to Seller's easements, without first obtaining permission from Buyer.

14.0 Force Majeure:

14.1 All obligations of the parties to this Agreement, except for obligations with respect to the payment of fees, charges, and other amounts due, shall be suspended while and for so long as compliance is prevented in whole or in part by an act of God, strike, lockout, war, civil disturbance, explosion, breakage, accident to machinery or pipeline, failure of well or sources of Gas supply, Federal or state or local law, inability to secure materials or rights of way or permits or approvals or licenses, binding order of a Court or Governmental Agency, the failure or inability or refusal or any pipeline or intrastate gas utility to accept Gas for delivery or otherwise to transport Gas, or by any other cause beyond the reasonable control of Buyer or Seller. Any delay caused by a force majeure event must be brought to the attention of the party not claiming the delay within ten (10) days after its occurrence or else the delay will not be considered an event of force majeure. Additionally, the party claiming excuse of the delay by

reason of force majeure must use best efforts to eliminate the cause or the impact of such event as soon as possible.

15.0 Construction and Maintenance of Infrastructure:

15.1 Seller, at its expense and in accordance with all applicable laws, ordinances, rules, regulations, and industry standards, shall operate, test as necessary, and maintain its facilities required for delivery of Gas to the Point of Delivery. All work shall be performed in a prompt, workman like, and lien-free manner. Seller is self-insured, in accordance with Florida law, for liability and shall not be required to obtain insurance as may otherwise be required by this Agreement. To the extent permitted by Florida law, Seller shall indemnify Buyer against any and all construction liens caused by Seller or Seller's contractor(s) for any work performed pursuant to this Agreement.

16.0 Indemnification:

16.1 To the extent permitted by Florida law, Seller and Buyer each shall defend, indemnify and hold the other, and its employees, harmless from all claims, suits, judgments, damages, costs, or expenses, including attorney's fees arising out of any negligent act, error, or omission of the indemnifying party or its employee(s). This obligation shall extend to suits or claims by employees of the indemnifying party and shall not be limited by any type or amount of damages paid by or for that party under any Worker's Compensation statute or other statutory employee benefit act or disability provision. The party seeking indemnification shall promptly notify the other party when it receives notice of any claim covered by this indemnification provision and subject to approval by the claiming party, shall authorize representatives of that other party to settle or defend any such claim or suit and to represent the party seeking indemnification in or to take charge of any litigation in connection therewith.

16.2 Notwithstanding the foregoing or any other provision of this Agreement, the liability of Seller under this Agreement is intended to be consistent with limitations of Florida law, including without limitation the state's waiver of sovereign immunity pursuant to Section 768.28, Florida Statutes, and no obligation imposed by this Agreement shall be deemed to alter said waiver or to extend the liability of Seller beyond such limits, nor shall any such obligation be deemed or construed as a waiver of any defense of sovereign immunity to which Seller may be entitled.

17.0 Severability:

17.1 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this

Agreement, and this Agreement shall be constructed as if such invalid, illegal or unenforceable provisions had not been contained herein.

18.0 Assignment:

18.1 This Agreement shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Agreement shall run for the full term of this Agreement. No assignment of this Agreement, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed.

19.0 Notices:

19.1 All notices, demands, requests, consents, approvals, and communications required or permitted to be given hereunder shall be in writing and sent by U.S. Mail (registered and prepaid), or by recognized overnight courier, or by hand delivery (with signed receipt), or by facsimile transmission (if confirmed by registered mail, recognized overnight courier, or hand delivery). Delivery shall be deemed effective upon receipt at the addressee's office, upon personal delivery to the addressee's office, or upon personal delivery to the addressee, whichever is applicable. All such notices shall be addressed as follows:

If to Seller --

City of Tallahassee
Gas Operations
2602 Jackson Bluff Road
Tallahassee, Florida 32304
Attn: Stephen Mayfield, Manager Gas Operations and Business
Development
Voice: (850) 891-5118
Fax: (850) 891-5161

If to Buyer –

Nopetro Tallahassee, LLC
111 East College Avenue
Tallahassee, Florida 32301
Attn: Jorge Herrera, CEO
Voice: (850) 224-4516
Fax: (850) 224-177 4

Either party may change its address or the person designated to receive such notice by notifying the other party of the change and its effective date in the manner provided in this Section 19.0.

20.0 Applicable Law:

20.1 The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Florida, excluding its choice of law provision.

21. Captions:

21.1 The captions in this Agreement are for convenience of reference only and shall not limit in any way or otherwise effect any of the terms or provisions of this Agreement.

22.0 Entire Agreement:

22.1 This Agreement, including the attachments hereto, constitutes the entire understanding and agreement between the parties hereto relating to the subject matter hereof and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding same. No terms, conditions, prior courses of dealing, courses of performance, usage of trade, understandings or agreements purporting to modify, vary, supplement or explain any provision of this Agreement shall be effective and none shall be binding unless in writing, signed by duly authorized representatives of both parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the _____ day of _____.

CITY OF TALLAHASSEE

Attest:

By: _____
James O. Cooke, IV
City Treasurer-Clerk

By: _____
Anita Favors Thompson
City Manager

Approved as to form:

By: _____
City Attorney

NOPETRO-TALLAHASSEE LLC

Witness as to Nopetro

By: _____

(Type or print name and title of signatory)

Witness as to Nopetro