

**INTERRUPTIBLE HOURLY BALANCING SERVICE AGREEMENT**

**(For Use Under Rate Schedule IHBS)**

Service Agreement No. \_\_\_\_\_

This Agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between EAST CHEYENNE GAS STORAGE, LLC, a Delaware limited liability company herein called "EAST CHEYENNE," and \_\_\_\_\_, an \_\_\_\_\_, herein called "Customer," (each of EAST CHEYENNE and Customer, a "Party," and collectively, the "Parties"), pursuant to the following recitals and representations:

WHEREAS, EAST CHEYENNE owns and operates an underground natural gas storage facility known as the East Cheyenne Facility, and is authorized to provide natural gas storage and related services in interstate commerce by way of the East Cheyenne Facility; and

WHEREAS, Customer has requested that EAST CHEYENNE provide certain interruptible hourly balancing natural gas storage services for Customer; and

WHEREAS, EAST CHEYENNE has agreed to provide such interruptible hourly balancing storage services for Customer subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, EAST CHEYENNE and Customer agree as follows:

**ARTICLE I - SCOPE OF AGREEMENT**

Following the commencement of service hereunder, in accordance with the terms of EAST CHEYENNE's Rate Schedule IHBS, and of this Agreement,

EAST CHEYENNE shall receive on any Day for injection into storage for Customer's account a quantity of Gas up to Customer's Maximum Daily Injection Quantity as set forth on Exhibit A hereto, shall store in the aggregate quantities of Gas so injected in the East Cheyenne Gas Storage, LLC underground gas storage facility located in Colorado, up to a Maximum Storage Quantity as set forth on Exhibit A and on demand on any Day shall withdraw from Customer's Storage Inventory and deliver to Customer a quantity of Gas up to Customer's Maximum Daily Withdrawal Quantity as set forth on Exhibit A; and

EAST CHEYENNE shall, for each hour during a Day, subject to maximum hourly limit as set forth on Exhibit A, receive or deliver at the Point(s) of Receipt/Delivery designated by Customer hourly balancing quantities of Gas which shall be the difference, on an hourly basis, between (i) the injections to or withdrawals from EAST CHEYENNE's storage of Gas as nominated by Customer to meet Customer's desired hourly pattern of deliveries at its delivery point(s) on the Transporter's (s') pipeline system(s) and (ii) Customer's ratable flow quantities on EAST CHEYENNE (1/24 of Daily nominated quantities).

## ARTICLE II – POINTS OF RECEIPT AND DELIVERY

The point(s) at which the Gas is to be tendered by Customer to EAST CHEYENNE under this Agreement shall be the point(s) designated on Exhibit A hereto as Customer’s Point(s) of Receipt.

The point(s) at which the Gas is to be tendered by EAST CHEYENNE to Customer under this Agreement shall be the point(s) designated on Exhibit A hereto as Customer’s Point(s) of Receipt.

## ARTICLE III - PRICE

3.1. Customer agrees to pay EAST CHEYENNE the charges as set forth on Exhibit A hereto for all Gas storage service furnished to Customer hereunder.

3.2. Customer further agrees to pay EAST CHEYENNE all other applicable fees and charges as set forth in the General Terms and Conditions and in Rate Schedule IHBS.

3.3. Customer shall reimburse EAST CHEYENNE for all applicable taxes as may be assessed against EAST CHEYENNE for the receipt, injection, storage, withdrawal and/or delivery of Customer’s Gas. In addition, Customer shall reimburse EAST CHEYENNE for Customer’s pro rata portion, calculated using the same methodology as that used to assess the tax, of all ad valorem taxes, property taxes and/or other similar taxes on Customer’s Gas in storage assessed against and paid by EAST CHEYENNE.

## ARTICLE IV - INCORPORATION OF RATE SCHEDULE AND TARIFF PROVISIONS

This Agreement shall be subject to the terms and conditions specified in EAST CHEYENNE’s Rate Schedule IHBS and the provisions of EAST CHEYENNE’s FERC Gas Tariff, as filed with the Federal Energy Regulatory Commission, together with the General Terms and Conditions applicable thereto (including any changes in said Rate Schedule, Tariff or General Terms and Conditions as may from time to time be filed and made effective by EAST CHEYENNE).

Customer agrees that EAST CHEYENNE shall have the unilateral right to file with the appropriate regulatory authority and make changes effective in (a) the terms and conditions of this Service Agreement, pursuant to which service hereunder is rendered, (b) the terms of EAST CHEYENNE’s Rate Schedule IHBS, or (c) any provision of the General Terms and Conditions applicable to this Service Agreement. EAST CHEYENNE agrees that Customer may protest or contest the aforementioned filings, and Customer does not waive any rights it may have with respect to such filings.

## ARTICLE V - TERM OF AGREEMENT

This Agreement shall be effective as of \_\_\_\_\_, \_\_\_\_, [this blank may include a date certain, a date either earlier or later than a specified date certain based on the completion of construction of facilities necessary to provide service under the Agreement, a date set forth in or established by a relevant order from the Federal Energy Regulatory Commission, or a commencement date as defined in a precedent agreement between Customer and EAST CHEYENNE] and shall remain in force and effect until \_\_\_\_\_, \_\_\_\_ [or, when applicable, “shall continue for a term of \_\_\_ years”]; (the “Primary Term”); provided that this Agreement shall remain in effect until the expiration of any transaction(s) executed by the Parties pursuant to this Agreement.

ARTICLE VI - NOTICE

Except as otherwise provided in the General Terms and Conditions applicable to this Agreement, any notice under this Agreement shall be in writing and may be sent by facsimile transmission or mailed to the post office address of the Party intended to receive the same, as follows:

EAST CHEYENNE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

CUSTOMER:

NOTICES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

BILLING: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or to such other address as either Party shall designate by formal written notice to the other. In all instances, the Parties shall use their best efforts to provide notice by facsimile prior to 5 p.m. Mountain Time. Notice received before 5 p.m. Mountain Time shall be deemed effective the day of receipt. Notice received after 5 p.m. Mountain Time shall be deemed effective the day following receipt.

ARTICLE VII - TRANSFER AND ASSIGNMENT OF ALL AGREEMENTS

Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of EAST CHEYENNE or of Customer, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. Otherwise, no assignment of this Agreement or any of the rights or obligations thereunder shall be made by Customer, except pursuant to the General Terms and Conditions of EAST CHEYENNE's FERC Gas Tariff. It is agreed, however, that the restrictions on assignment contained in this Article shall not in any way prevent either Party to the Agreement from pledging or mortgaging its rights thereunder as security for its indebtedness. Pursuant to Section 26 of the General Terms and Conditions of EAST CHEYENNE's FERC Gas Tariff, from time to time EAST CHEYENNE may request that Customer execute a Consent and Agreement, on the form provided in EAST CHEYENNE's FERC Gas Tariff, in favor of lenders providing financing in support of the East Cheyenne Gas Storage Project or any expansion thereof. Customer shall execute such Consent and Agreement within thirty (30) days of EAST CHEYENNE's request.

ARTICLE VIII - LAW OF AGREEMENT

THE INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE IN ACCORDANCE WITH AND CONTROLLED BY THE LAWS OF THE STATE OF TEXAS, OR SUCH OTHER STATE AS APPLICABLE CONSISTENT WITH SECTION 36 OF THE GENERAL TERMS AND CONDITIONS OF EAST CHEYENNE'S FERC GAS TARIFF, IN EITHER CASE WITHOUT REGARD TO DOCTRINES GOVERNING CHOICE OF LAW.

ARTICLE IX - LIMITATION OF REMEDIES, LIABILITY AND DAMAGES

Unless expressly herein provided, neither Party shall be liable to the other for indirect, special, consequential, incidental, punitive or exemplary damages. Notwithstanding the foregoing, nothing in this Article IX shall limit the liability of either Party to the other Party, if any, arising out of gross negligence, willful misconduct, or bad faith actions.

ARTICLE X - PRIOR AGREEMENTS CANCELLED

EAST CHEYENNE and Customer agree that this Agreement, as of the date hereof, shall supersede and cancel the following Agreement(s) between the Parties hereto:

Storage Service Agreement dated \_\_\_\_\_, \_\_\_\_.

ARTICLE XI - WAREHOUSEMEN'S LIEN

11.1 CUSTOMER HEREBY ACKNOWLEDGES THAT EAST CHEYENNE SHALL BE ENTITLED TO, AND EAST CHEYENNE HEREBY CLAIMS, A LIEN ON ALL GAS RECEIVED BY EAST CHEYENNE FROM CUSTOMER, AND ALL PROCEEDS THEREOF, UPON SUCH RECEIPT BY EAST CHEYENNE, AS PROVIDED IN SECTION 7-209 OF THE TEXAS UNIFORM COMMERCIAL CODE WITH THE RIGHTS OF ENFORCEMENT AS PROVIDED THEREIN AND HEREIN. IN NO WAY LIMITING THE FOREGOING, CUSTOMER HEREBY ACKNOWLEDGES THAT EAST CHEYENNE SHALL BE ENTITLED TO, AND EAST CHEYENNE HEREBY CLAIMS, A LIEN FOR ALL CHARGES FOR STORAGE OR TRANSPORTATION (INCLUDING DEMURRAGE AND TERMINAL CHARGES), INSURANCE, LABOR, OR CHARGES PRESENT OR FUTURE IN RELATION TO THE RECEIVED GAS, AND FOR EXPENSES NECESSARY FOR PRESERVATION OF THE RECEIVED GAS OR REASONABLY INCURRED IN THE SALE THEREOF, PURSUANT TO LAW, AND THAT SUCH LIEN SHALL EXTEND TO LIKE CHARGES AND EXPENSES IN RELATION TO ALL SUCH RECEIVED GAS.

11.2 IF DEEMED NECESSARY BY A COURT OF LAW, PURSUANT TO SECTION 7-202 OF THE TEXAS UNIFORM COMMERCIAL CODE, CUSTOMER HEREBY AGREES THAT:

(i) THIS AGREEMENT, WITH ALL SCHEDULES AND EXHIBITS HERETO, AND ALL OF THE MONTHLY STATEMENTS RENDERED BY EAST CHEYENNE TO CUSTOMER PURSUANT TO THE GENERAL TERMS AND CONDITIONS CONTAINED IN EAST CHEYENNE'S TARIFF, SHALL BE DEEMED A "WAREHOUSE RECEIPT" FOR ALL PURPOSES WITH RESPECT TO ARTICLE 7 OF THE TEXAS UNIFORM COMMERCIAL CODE, REGARDLESS OF WHEN THE GAS STORED PURSUANT TO THE CONTRACT IS RECEIVED;

(ii) THE LOCATION OF THE WAREHOUSE, TO WHOM THE GAS WILL BE DELIVERED, RATE OF STORAGE AND HANDLING CHARGES, AND DESCRIPTION OF THE GOODS ARE AS SET FORTH, RESPECTIVELY, IN THE PREAMBLE OF THIS AGREEMENT, ARTICLE II OF THIS AGREEMENT, THE

MONTHLY INVOICE (AS DESCRIBED IN SECTION 13.1 OF THE GENERAL TERMS AND CONDITIONS) AND SECTION 2 (DEFINITION OF "GAS") OF THE GENERAL TERMS AND CONDITIONS;

(iii) THE ISSUE DATE OF THE WAREHOUSE RECEIPT WITH RESPECT TO EACH RECEIPT OF GAS SHALL BE DEEMED TO BE THE DATE SUCH GAS WAS RECEIVED,

(iv) THE CONSECUTIVE NUMBER OF THE RECEIPT SHALL BE DEEMED BASED ON THE DATES OF RECEIPT WHEN LISTED IN CHRONOLOGICAL ORDER, BEGINNING WITH THE FIRST RECEIPT OF GAS UNDER THE TERMS OF THE CONTRACT, AND

(v) THE SIGNATURE OF EAST CHEYENNE ON THE CONTRACT SHALL BE DEEMED TO BE THE SIGNATURE OF THE WAREHOUSEMAN.

#### ARTICLE XII - MISCELLANEOUS

12.1. This Agreement sets forth all understandings and agreements between the Parties respecting the subject matter hereof, and all prior agreements, understandings and representations, whether written or oral, respecting the subject matter hereof are superseded by this Agreement. No modification of the terms and provisions of this Agreement shall be made except by the execution by both Parties of a written agreement.

12.2. No waiver by a Party of any default(s) by the other Party in the performance of any provision, condition or requirement of this Agreement shall operate or be construed as a waiver of any future default(s), whether of a like or of a different character, nor in any manner release the defaulting Party from performance of any other provision, condition or requirement set forth herein.

12.3. If any provision of this Agreement is declared null and void or voidable by a court of competent jurisdiction, such declaration shall in no way affect the validity or effectiveness of the other provisions of this Agreement, which shall remain in full force and effect, and the Parties shall thereafter use their commercially reasonable efforts to agree upon an equitable adjustment of the provisions of this Agreement with a view to effecting its purpose.

12.4. No presumption shall operate in favor of or against any Party as a result of any responsibility or role that any Party may have had in the drafting of this Agreement.

12.5. This Agreement shall not create any rights in third parties, and no provisions hereof shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than EAST CHEYENNE or Customer.

12.6. This Agreement may be executed in counterparts, and all such executed counterparts shall form part of this Agreement. A signature delivered by facsimile shall be deemed to be an original signature for purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in several counterparts by their authorized agents as of the date first written above.

**Customer: EAST CHEYENNE:**

Name of Authorized Representative:

\_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Authorized Representative:

\_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A to the Interruptible Hourly Balancing Storage Service Agreement  
between EAST CHEYENNE and

\_\_\_\_\_ (Customer)

Transaction Confirmation

Customer is a municipal utility to which Part 6, Section 36 of EAST CHEYENNE's FERC Gas Tariff Yes \_\_\_\_\_ No \_\_\_\_\_

Maximum Storage Quantity ("MSQ") \_\_\_\_\_ Dth  
 Maximum Daily Injection Quantity ("MDIQ") \_\_\_\_\_ Dth  
 Maximum Daily Withdrawal Quantity ("MDWQ") \_\_\_\_\_ Dth  
 Maximum Hourly Balancing Quantity \_\_\_\_\_ Dth

Primary Receipt Point \_\_\_\_\_ \*  
 Maximum Daily Receipt Quantity ("MDRQ") \_\_\_\_\_ Dth\*

Primary Delivery Point \_\_\_\_\_ \*  
 Maximum Daily Delivery Quantity ("MDDQ") \_\_\_\_\_ Dth\*

Service Start Date \_\_\_\_\_  
 Service End Date \_\_\_\_\_

Hourly Balancing Charge \_\_\_\_\_ \$/Dth  
 Storage Inventory Charge \_\_\_\_\_ \$/Dth  
 Storage Injection Charge \_\_\_\_\_ \$/Dth  
 Storage Withdrawal Charge \_\_\_\_\_ \$/Dth

Title Transfer Charge \_\_\_\_\_ \$/Dth  
 Injection Fuel Reimbursement \_\_\_\_\_ (in-kind %)  
 Withdrawal Fuel Reimbursement \_\_\_\_\_ (in-kind %)

\* Add additional lines for multiple Receipt and/or Delivery Points. Any Receipt Point not listed above shall have an MDRQ of zero (0) and any Delivery Point not listed above shall have an MDDQ of zero. Customer shall have the right to use any Receipt Point for receipt quantities of Gas in excess of its MDRQ (subject to its MDIQ for all Receipt Points) and any Delivery Point for delivery of quantities of Gas in excess of its MDDQ (subject to its MDWQ for all Delivery Points) on a secondary basis.

This Exhibit A shall supersede and cancel the Exhibit A dated: \_\_\_\_\_.

**Customer: EAST CHEYENNE:**

Name of Authorized Representative:

\_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Authorized Representative:

\_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Note: EAST CHEYENNE and Customer may enter into a transaction for storage or hub services pursuant to the Transaction Confirmation Procedure set forth at Section 32 of the General Terms and Conditions of EAST CHEYENNE's FERC Gas Tariff.