

# ATTACHMENT A

## FRANCHISE AGREEMENT BETWEEN SOUTHWEST GAS CORPORATION AND THE CITY OF PHOENIX, ARIZONA

### Section 1 – Grant of Franchise

The City of Phoenix, Arizona (“**City**”) hereby grants to Southwest Gas Corporation, a corporation organized and existing under and by virtue of the laws of the State of California (herein called “**Grantee**”), its successors and assigns, the right and privilege to construct, maintain and operate its gas system and gas system facilities, as defined herein, upon, over, along, across and under the present and future public rights-of-way (the “**Franchise**”). These public rights-of-way include, but are not limited to, present and future public roads, public streets, alleys, ways, bridges, and highways of the City (“**Public Rights-of-Way**”). Grantee’s gas system is for the purpose of supplying natural gas and/or artificial gas, including gas manufactured by any method whatsoever, and/or gas containing a mixture of natural gas and such artificial gas (herein all types of gas will be collectively referred to as “**gas**”) to City, its successors, the inhabitants thereof, and all individuals and entities, either within or beyond the limits thereof, for all purposes. Grantee’s gas system includes a transmission and distribution system of gas mains, pipelines and conduits, together with all necessary or desirable appurtenances including, but not limited to pipes, laterals, service lines, pumps, manholes, meters, gauges, valves, traps, fences, vaults, regulators, regulator stations, appliances, attachments and related equipment, facilities, appurtenances and/or property for the purpose of supplying gas (individually, and collectively, “**Gas System Facilities**”). Grantee will have the right to install, maintain, construct, operate, use, repair or replace any or all of its Gas System Facilities from time to time as may be necessary.

### Section 2 – Term

2.1 The Effective Date of this Franchise will be January 1, 2019. This Franchise will continue and remain in full force and effect for a period of twenty-five (25) years from the Effective Date. Unless terminated earlier by written agreement of the parties, this Franchise will expire on December 31, 2043.

### Section 3 – Construction

3.1 Grantee will perform all construction under this Franchise in accordance with established industry standards, permit requirements, and ordinances of the City. Without limitation, Grantee will comply with ordinances of the City regarding street cuts. Such construction will be completed within a reasonable time. Before Grantee makes any installations in the Public Rights-of-Way, Grantee will apply for and obtain from City such permit or permits as are required by City to be issued for other similar construction or work in the Public Rights-of-Way and submit for approval a map showing the location of such proposed installations to the City Engineer.

3.2 Unless necessitated by emergency or exigent circumstances, should Grantee commence work hereunder without obtaining applicable permits, then Grantee will pay to City a stipulated penalty of equal to one-hundred fifty percent (150%) of the applicable permit fees.

3.3 Grantee will have the right to undertake without delay such emergency activities necessary to provide for and maintain the reliability and safety of its Gas System Facilities. If such emergency activities are required, Grantee shall perform the work under the blanket emergency permit and notify the City's Utility Inspections section of such work within 24 hours.

3.4 Upon request, Grantee will also provide the City with, on an annual basis, its known proposed capital plan and reasonably foreseeable future corridor plans for all improvements in the City's planning area.

3.5 If City undertakes, either directly or through a contractor, a construction project adjacent to Grantee's facilities operated pursuant to this Franchise, City, at City's discretion, may notify Grantee of such construction project. If notified, Grantee must take steps Grantee determines to be reasonably necessary to maintain the safety of Grantee's Gas System Facilities throughout the construction project.

3.6 All facilities installed or constructed pursuant to this Franchise will be so located or relocated and so erected as to minimize the interference with traffic and other authorized uses over, under or through the Public Rights-of-Way.

A. Grantee will coordinate the installation, construction, use, operation and relocation of its facilities within City as appropriate to enable City to better plan, facilitate and protect public safety and convenience.

B. Grantee will provide reasonable advanced notice to businesses and residents prior to beginning scheduled construction activities adjacent to the businesses' and residents' property in compliance with the City's generally applicable Phoenix City Code, regulations, and permit conditions for work in the City's Rights-of-Way.

C. Grantee will provide City with proposed installation drawings to facilitate such coordination and will plan, facilitate and design its facilities, to the extent practicable, in coordination with City input, as City may provide.

D. Upon reasonable notice by City, as determined by City, of the proposed paving of a public right-of-way, Grantee will review the City' proposed paving and, if warranted in Grantee's judgment, perform work on its Gas System Facilities to avoid the need to subsequently cut the paved Public Rights-of-Way.

E. Grantee will not install, construct, maintain or use its facilities in a manner that damages or interferes with any existing facilities of another utility located in the Public Rights-of-Way.

3.7 Those phases of construction of Grantee's Gas System Facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of pipelines and related facilities herein provided for will be subject to regulation by City.

3.8 Pursuant to A.R.S. § 40-360.30 and any other applicable law, Grantee will keep installation records of the location of all facilities in the Public Rights-of-Way and will furnish or provide access to them to City upon request.

3.9 Grantee's Gas System Facilities are defined as critical infrastructure by the federal government and as such, City agrees that records of the location or design of gas facilities are proprietary to Grantee and City will not release nor make available any records to any outside party without the express, written permission of Grantee.

3.10 City will make reasonable efforts to complete Utility Coordination (permit review and issuance) application reviews within 10 business days. In no event, will any Utility Coordination (permit review and issuance) application reviews exceed a timeframe of 15 business days, unless otherwise agreed to between Grantee and City.

3.11 Grantee may request a Utility Coordination (permit review and issuance) application be reviewed under a shorter review timeframe (an expedited review), without payment of additional costs or fees, under the following conditions:

- A. Not more than three (3) times per month, or not more than thirty (30) times per year; and,
- B. The request for an expedited review must be made from the Grantee's Engineering Manager or Public Affairs Department to the City's Special Projects Administrator (or manager position for the Utility Coordination group); and,
- C. The City will make reasonable efforts to complete the first review within 5 business days, not counting the day of receipt, unless there are extenuating circumstances; and,
- D. A plan that requires corrections by the Grantee shall be resubmitted for second review under the City's standard timeframe for plan review if Grantee has exhausted its monthly allocation of expedited reviews; and,
- E. A plan must be 30 pages or less to be eligible for expedited review.

3.12 In no event will any Right of Way Management application reviews exceed a timeframe of 3 business days for a full street closure, or 2 business days for a partial street closure, unless otherwise agreed to between Grantee and City.

#### **Section 4 – Restoration of Public Rights-of-Way**

4.1 If, in the construction, maintenance or operation of its gas system, Grantee damages or disturbs the surface or subsurface of any public road, adjoining public property, or the public improvement located thereon, therein, or thereunder, then Grantee will promptly, at its own expense, unless otherwise agreed to between City and Grantee or provided in this Franchise, restore the surface or subsurface of the public road or public property, or repair or replace the public improvement thereon, therein, or thereunder, as may be required by construction standards established by the City in effect at that time.

4.2 Should such restoration, repair or replacement not be completed within a reasonable time or fails to meet City's construction standards established by the City, as may be amended from time to time, the City may, after prior notice and reasonable time for Grantee to cure, perform the necessary restoration, repair or replacement either through City's own forces or through a City-hired contractor, and Grantee agrees to reimburse the City for its costs and expenses in so doing within thirty (30) days after its receipt of the City's invoice. As used in this Section 4.2,

"costs and expenses" includes, but is not limited to, identifiable administrative costs and employee wages and benefits costs incurred by the City in the performance of such restoration, repair or replacement.

### **Section 5 – Franchise Fee**

5.1 Grantee will pay to City in consideration of the grant of this Franchise a sum equal to two percent (2%) of the gross revenues of Grantee, from the sale and/or delivery by Grantee of gas for all purposes, to Grantee's customers within the corporate limits of City, as shown by Grantee's billing records ("Gross Revenues"). The Gross Revenues are derived only from Grantee's Commodity Charge and Basic Service Charge, as provided in the Grantee's Arizona Gas Tariff on file with the Arizona Corporation Commission, as may be amended from time to time. Such payments are to be due and payable thirty (30) days after the end of the calendar quarter, and will be considered late if not received within thirty (30) days of the due date. A five percent (5%) penalty will be added to payments not made within the required time, and interest of one and one-half percent (1.5%) per month will accrue on the entire amount due. Interest and penalties can be waived by the City for reasonable cause or if casualty renders Grantee unable to compute or estimate the liability from business records.

5.2 Should the Grantee or the City determine that Grantee over collected or under collected the required amount of Franchise Fees from its customers, Grantee will immediately adjust its Franchise Fee collections to ensure that no more or no less is collected from its customers as is required to be remitted to the City.

5.3 Grantee will pay Franchise Fees pursuant to the terms of the former Franchise Agreement between Grantee and City through December 31, 2018. Beginning January 1, 2019 payment as described in the preceding paragraphs will be payable in quarterly amounts within thirty (30) days after the end of each calendar quarter.

5.4 If at any time during the term of this Franchise, Grantee is paying any municipality in the State of Arizona a Franchise Fee greater than two percent (2%) of Grantee's gross revenues from the sale and/or delivery of gas by Grantee in such municipality's corporate limits, then, after written request by the City, the percentage set forth in Section 5.1 will be increased to match the greater percentage amount Grantee is paying to such other municipality under a franchise agreement. If City requests Grantee to match such greater Franchise Fee, then City agrees that all of the terms, conditions and limitations applicable in the franchise agreement that has the greater Franchise Fee payment are applicable to this Franchise Agreement.

5.5 In addition to the foregoing Franchise Fees, Grantee will pay charges, taxes, and fees as described in Section 6 of this Agreement.

### **Section 6 — Additional Fees and Taxes**

6.1 Notwithstanding any provision to the contrary herein, Grantee will, in addition to the payment provided in Section 5, pay the following charges, taxes and fees as established in a code or ordinance properly adopted by the City:

- A. General ad valorem property taxes;
- B. Transaction privilege and use tax authorized by City ordinance and billed by Grantee from users and consumers of gas within the corporate limits of the City, without reduction or offset;

- C. Other charges, taxes or fees levied upon businesses generally through the City provided said charge, tax or fee is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other business operated within City.
- D. Right-of-Way Management Fees (fees relating to traffic safety, traffic control, and barricades) and Utility Inspection Fees (fees relating to inspection of permitted utility construction projects for compliance with plans, specifications, and permitting requirements). Grantee is not required to pay other City fees, including but not limited to Utility Coordination fees (permit review and issuance fees).

## **Section 7 – Relocation of Facilities**

7.1 The City reserves its prior superior right to use the Public Rights-of-Way and City property, including the surface areas, for all governmental function projects funded with City funds and projects that may include federal, state or other local funds in addition to City funds. Grantee shall, upon written request by City, relocate, without expense to the City, any of Grantee's Gas System Facilities that are in direct, physical conflict with any City governmental function project funded with City funds to such location as the City and Grantee agree.

7.1.1 Governmental functions include, but are not limited to, the following:

- A. Any and all improvement to City-owned streets, alleys and avenues, and other City property;
- B. Establishing and maintaining City-owned storm drains, sewer lines, effluent lines, water wells, wastewater treatment facilities and any other City-owned facilities related thereto;
- C. Establishing and maintaining City parks, parking, parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purpose of landscaping City streets or City property;
- D. City-provided fire protection and other public safety functions;
- E. City-provided public transportation;
- F. City-provided water utility systems.

7.1.2 The City will reimburse Grantee for qualified facility relocations under Proposition 400 (regional tax passed by voters on November 2, 2004) and Proposition 104, also known as T-2050 (a local transportation initiative passed by voters on August 25, 2015), if requested by Grantee.

7.1.3 If Grantee asserts any prior rights, Grantee must demonstrate to City's satisfaction how it maintains any prior rights in the subject location.

7.2 City will bear the reasonable cost of relocating any of Grantee's Gas System Facilities (a) that are not in direct, physical conflict with any City governmental function project; (b) the relocation of which is necessitated by the construction of improvements by or on behalf of City in furtherance of any project other than a governmental function project funded with City funds; or (c) when Grantee's Gas System Facilities have prior rights to the City's facilities.

7.2.1 If City participates in the cost of relocating Grantee's facilities for any reason, the cost to the City will be limited to those costs and expenditures reasonably incurred for relocating such facilities in accordance with City ordinances and, where not in conflict therewith, applicable industry standards. Costs to the City for relocation of Grantee's facilities will not include any upgrade or improvement of Grantee's facilities as they

existed prior to relocation. Prior to payment by City, Grantee must provide an itemization of such costs and expenditures.

7.3 If Grantee is required to relocate any Gas System Facilities within one year of construction or relocation project completion of such facilities paid for by Grantee, the costs of relocation shall be borne by City.

7.4 If City requires Grantee to relocate Grantee's Gas System Facilities that are located in a private easement obtained by Grantee prior to City's acquisition of said property from which the facilities must be relocated, then the costs and expenditures associated with purchasing a new private easement and relocating Grantee's Gas System Facilities shall be paid by City.

7.5 If relocation of any Gas System Facilities is required or requested due to the actions or inactions of any party other than the City, the third party shall be responsible for the cost of such relocation and Grantee shall not be required to commence such work until such time that the third party compensates Grantee for the relocation costs in cash or other manner acceptable to Grantee.

7.6 The City and Grantee agree that City is not a party to disputes among permittees or other interested parties using the Public Right-of-Way.

7.7 City will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner, or to avoid its obligations under this Franchise.

7.8 All underground abandoned lines shall continue to remain the property of the Grantee, unless the Grantee specifically acknowledges otherwise to the City Engineer and such is accepted by the City. Grantee shall remove, at Grantee's sole cost, abandoned lines at the request of City when Grantee's Gas System Facilities are in direct, physical conflict with a City governmental function project. Grantee may contract with City contractor for such removal.

7.8.1 Prior to removal of any abandoned lines, Grantee must notify City of its intent to remove abandoned lines and offer possession of said lines to City.

7.8.2 Grantee must identify the location of any known abandoned lines as they exist through Blue Staking.

## **Section 8 – Indemnification; Insurance**

8.1 Grantee's indemnification, duty to defend, save and hold harmless in Section 8.2 below only applies to Claims (as defined in Section 8.2 below) that arise as a result of the work performed under this Franchise. Further, nothing in this Agreement shall impede or otherwise limit a party's statutory rights under A.R.S. 40-423 or A.R.S. 12-820 et. seq.

8.2 Grantee agrees to indemnify, defend, save, and hold harmless, the City of Phoenix for any work included within this Franchise, and its elected or appointed officials, agents, boards, commissions, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all suits, claims, demands, actions, liabilities, damages, losses, or expenses of any nature or kind whatsoever, including court costs, attorneys' fees, and costs of claim processing, investigation, litigation (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage caused, or alleged to be caused in whole or in part, by the negligence or willful acts or omissions of Grantee or any of Grantee's directors, officers, agents, employees, or

volunteers. This indemnity includes any claims or amount arising or recovered under the Worker's Compensation Laws or arising out of the failure of Grantee to conform to any federal, state or City law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Grantee and City that the Indemnatee will, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Grantee from and against any and all Claims for personal injury (including death) or property damage caused, or alleged to be caused in whole or in part, by the negligence or willful acts or omissions of Grantee or any of Grantee's directors, officers, agents, employees, or volunteers. It is agreed that Grantee will be responsible for primary loss, investigation, defense, and judgment costs where this indemnification is applicable. In consideration of receiving this, Grantee agrees to waive all rights of subrogation against the City, its officers, agents and employees for losses arising from Grantee's activities under this Franchise. Nothing in this provision shall preclude Grantee from seeking contribution from any third party jointly responsible for such damages or Claims.

8.3 Grantee shall procure and maintain for the duration of this Franchise insurance or self-insurance against claims for injuries to persons or damages to property which may arise or result from work performed under this Franchise. These insurance requirements are minimum requirements for this Franchise and in no way limit the indemnity covenants contained in this Franchise. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Grantee from liabilities that might arise out of this Franchise for the Grantee, and Grantee is free to purchase such additional insurance as may be determined necessary.

8.4 Minimum Coverage Requirements. The Grantee shall provide coverage, in the form of insurance, self-insurance, or a combination thereof, which includes coverage for the work performed under this Franchise, including but not limited to, products-completed operations, personal and advertising injury, and fire damage in an amount not less than Ten Million Dollars (\$10,000,000.00). . An excess liability or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis or such excess liability or umbrella liability policy provides coverage at least as broad as the primary policy.

8.5 Policy Provisions. The insurance policies furnished by Grantee are to contain, the following provisions: (i) The City of Phoenix shall be named as an additional insured with respect to liability arising out of the use and/or occupancy of the right of way subject to this Franchise and activities performed by or on behalf of the Grantee under this Franchise, including completed operations of the Grantee, and automobiles owned or operated by Grantee; (ii) commercial general liability insurance shall include bodily injury, property damage and broad form contractual liability coverage; (iii) the Grantee's insurance coverage shall be primary insurance and noncontributory with respect to all other available sources relating to work performed under this Franchise; (iv) the Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (v) coverage provided by the Grantee may not be limited to the liability assumed under this Franchise.

8.6 Notice of Cancellation and Certificate of Insurance Required. Insurance is to be placed with insurers duly license, authorized, permitted or approved in the State of Arizona and with a "Best's" rating of not less than B+ VI. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the Grantee from potential insurer insolvency.

8.7 Grantee shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Franchise. The certificates for each insurance policy

are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and any required endorsements must be received and approved by the City prior to issuance of a License. Each insurance policy required by this Franchise must be in effect at or prior to issuance of a License and remain in effect for the duration of the License. Failure to maintain the insurance policies required by this Franchise or to provide evidence of renewal shall be grounds for immediate revocation of a License. All certificates of insurance required by this Franchise shall be sent directly to: City of Phoenix, Street Transportation Department, Attn: Utility Coordination, 200 West Washington, 5<sup>th</sup> Floor, Phoenix, AZ 85003. The City Franchise number and description shall be provided on the certificate of insurance. Upon request by the City, the Grantee shall make its policies available for review in a mutually convenient location in the City of Phoenix, and upon execution of a commercially reasonable non-disclosure and confidentiality agreement. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

8.8 Any modification or variation from the insurance requirements in this Franchise must be approved by the City's Law Department and Finance Department, whose decision shall be final. Such action will not require a formal amendment to this Franchise, but may be made by administrative action.

**Section 9 – No Transfer Without Consent of City**

The right, privilege and franchise hereby granted may not be transferred in whole or in part by the Grantee, its successors and assigns, without the prior written consent of the City and the Arizona Corporation Commission, which shall not be unreasonably withheld. No consent will be required in connection with an assignment made as security pursuant to a mortgage or deed of trust or in connection with subsequent transfer made pursuant to any such instrument. Notwithstanding the prior sentence, Grantee must provide notice to City when any such security instrument involving the transfer of this Franchise is executed.

**Section 10 – Franchise; Non-Exclusive**

This Franchise is non-exclusive, and nothing contained herein will be construed to prevent City from granting similar rights or privileges to any other person, firm or corporation.

**Section 11 – Notices**

Any notice required or permitted to be given hereunder will be in writing, unless otherwise expressly permitted or required, and will be deemed effective either (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

To the City: City Manager  
City of Phoenix  
200 W. Washington St., 12th Floor  
Phoenix, AZ 85003

With a copy to: City Attorney  
City of Phoenix  
200 W. Washington St., 13th Floor



Phoenix, AZ 85003

To Southwest Gas Corporation: Public Affairs Department  
Southwest Gas Corporation  
1600 E. Northern Avenue  
Phoenix, Arizona 85257

With a copy to: Legal Affairs Department  
Southwest Gas Corporation  
5241 Spring Mountain Road  
Las Vegas, Nevada 89193-8510

### **Section 12 – Voter Approval**

This Franchise Agreement is subject to the approval of the qualified electors of the City. If Grantee's franchise is the sole item on City's ballot for the election, then Grantee must pay one hundred percent (100%) of the election costs. If Grantee's franchise is not the sole item on City's ballot for the election, then Grantee must pay fifty percent (50%) of the election costs. Grantee must pay one hundred percent (100%) of any publication costs.

### **Section 13 – Independent Provisions**

If any section, paragraph, clause, phrase or provision of this Franchise is determined to be invalid or unconstitutional, the same will not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional.

### **Section 14 – Default; Dispute Resolution**

14.1 Failure or unreasonable delay by either party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from the other party will constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure will be commenced within such period, and diligently pursued to completion. The notice will specify the nature of the alleged default and how the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party will be entitled to all remedies at both law and in equity, including, without limitation, specific performance.

14.2 To further cooperation by the parties in implementing this Franchise, the City and Grantee each will designate and appoint a representative to act as a liaison between the City and its various departments and Grantee. The initial representative for the City will be the City Manager or designee and the initial representative for Grantee will be its project manager, as identified by Grantee from time to time. The parties' representatives will be available at all reasonable times to discuss and review the performance of the parties under this Franchise.

### **Section 15 – Audit Rights**

15.1 City has the authority, at City's expense, to conduct an audit of the Grantee at any time during the duration of this Franchise to determine compliance of the Grantee under this agreement. An audit will be conducted in such a way as not to disrupt Grantee's business operations and will be performed in accordance with Generally Acceptable Auditing Standards. All pertinent books and records relating to this Franchise are subject to an audit conducted by the

City or its representatives. The City may determine the scope of each audit conducted; however, the period that may be audited will not exceed 60 months prior to the date the notice is received by the Grantee. An audit will not be required more than once in a single 12-month period.

15.2 The Grantee must pay to the City within 45 days written notice any amounts that are due to the City as determined by any audit of the Grantee. Reimbursement for underpayment as a result of audit findings will be identified as late payments and are subject to late payment interest of 1.5% per month. Also, if the Grantee has underpaid the City by 5% or more of amounts due (excluding penalties and interest), Grantee will reimburse the City for reasonable and full costs of the audit.

**Section 16 – No Waiver or Limitation of Powers of Eminent Domain/Right to Purchase**

City reserves the right and power to condemn and purchase the plant and distribution facilities of the Grantee within the corporate limits or any additions thereto, as provided by law, during the term of the Franchise and/or upon its expiration.

PASSED AND ADOPTED by the Council of the City of Phoenix, Arizona, this

\_\_\_\_\_ day of \_\_\_\_\_, 2018

CITY OF PHOENIX,  
An Arizona municipal corporation

\_\_\_\_\_  
Ed Zuercher, City Manager

SOUTHWEST GAS CORPORATION  
A California Corporation

By: \_\_\_\_\_

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk