

APPENDIX A – FRANCHISES

ORDINANCE NO. 05-68

(Franchise Agreement)

AN ORDINANCE GRANTING SOUTHWEST GAS CORPORATION, A CALIFORNIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE UPON, OVER, ALONG, ACROSS AND UNDER THE STREETS, AVENUES, ALLEYS, HIGHWAYS, BRIDGES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF PEORIA, ARIZONA, ITS GAS LINES, TRANSMISSION AND DISTRIBUTION SYSTEM AND NECESSARY APPURTENANCES FOR THE PURPOSE OF SUPPLYING GAS, INCLUDING GAS MANUFACTURED BY ANY METHOD WHATSOEVER, AND/OR GAS CONTAINING A MIXTURE OF NATURAL GAS AND SUCH ARTIFICIAL GAS, AND/OR NATURAL GAS, TO THE CITY, ITS SUCCESSORS, THE INHABITANTS THEREOF, AND INDIVIDUALS AND ENTITIES WITHIN THE LIMITS THEREOF; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE SUBMISSION HEREOF TO THE ELECTORS FOR THEIR APPROVAL; AND DECLARING AN EMERGENCY.

WHEREAS, Southwest Gas Corporation, a California corporation, organized and existing under and by virtue of the laws of the State of California, has submitted a proposed Franchise to be granted to said Corporation, its successors and assigns, by the City of Peoria, Arizona, for the purpose of constructing, maintaining and operating its gas mains, pipelines and transmission and distribution system upon, over, along, across and under the present and future streets, alleys, highways, bridges, and other public rights-of-way in the City of Peoria, Arizona, together with all necessary appurtenances, for the purpose of supplying natural gas, to the City of Peoria, its successors, the inhabitants thereof, and all individuals and entities within the limits thereof; and the Constitution and laws of the State of Arizona and the Charter of the City of Peoria to provide for and require the submission of this proposed Franchise to the qualified electors of the City of Peoria for their approval or disapproval.

THEREFORE, be it ordained by the Mayor and Council of the City of Peoria, Arizona, as follows:

Section 1. – Repealing and Replacing:

This ordinance repeals and replaces the previous Southwest Gas Corporation Franchise and amends Appendix A of the City of Peoria City Code (1992) to read as follows:

Section 2. - Grant of Franchise:

There is hereby granted to Southwest Gas Corporation, a California corporation, organized

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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 facilities and distribution system, as defined herein, upon, over, along, across and under the present and future public rights-of-way (herein called “Franchise”). These rights-of-way include, but are not limited to, streets, alleys, highways and bridges in the City of Peoria, Arizona (herein called “the City”). Grantee’s system includes a natural gas and/or artificial gas transmission and distribution system, together with all necessary appurtenances, including, but not limited to, conduits, supply lines, laterals, and transmission and distribution system, pipes, laterals, service lines, pumps, manholes, meters, gauges, valves, traps, vaults, regulators, regulator stations, appliances, attachments and related equipment, facilities and appurtenances 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 called the “natural gas”). This Franchise is for Grantee’s use of the City’s public rights-of-way to supply and deliver natural gas to the City, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.

This Franchise shall extend to and include all streets, avenues, alleys, highways, bridges, and other public rights-of-way within the limits of the City, and any part thereof, either as now located and as may be hereafter or extended within the present or any future limits of the City, provided, however, that the City shall not be liable to Grantee should Grantee construct facilities pursuant to this grant on an area which the City has erroneously exercised dominion and control.

Section 3. – Grantee’s Compliance with City Practice; Plans Submitted for Approval; City Construction Near Grantee’s Facilities:

Grantee shall perform all construction under this Franchise in accordance with the City’s established practices, duly adopted standards or as required by permits, which may incorporate special standards when required for City purposes with respect to such public rights-of-way. Without limitation, Grantee shall comply with ordinances of the City regarding street cuts. Such construction shall be completed within a reasonable time. Before Grantee makes any installations in the public rights-of-way, Grantee shall apply for and obtain from the City such permit or permits as are required by the City (pursuant to the City Street Code Chapter 23 of the City Code) to be issued for other similar construction or work in the public rights-of-way, pay applicable permit fees, and submit for approval a map showing the location of such proposed installations to the City Engineer/Engineering Director. The City shall issue such permit or permits to the Grantee on such conditions as are reasonable and necessary to ensure compliance with the terms and conditions of this Franchise. Unless necessitated by emergency or exigent circumstances, should Grantee commence work hereunder without obtaining applicable permits, then Grantee shall pay to the City, in addition to applicable permits fees, a stipulated penalty of equal to one hundred percent (100%) of the applicable permit fees. Upon request, Grantee shall also provide the City with, on an annual basis, their known proposed capital plan and reasonably foreseeable future corridor plans for all improvements in the City’s planning area.

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If the City undertakes, either directly or through a contractor, any construction project adjacent to Grantee's facilities operated pursuant to this Franchise, the City shall notify Grantee of such construction project. Grantee will take steps as are reasonably necessary to maintain safe conditions throughout the construction project, including, but not limited to, the temporary removal or barricading of Grantee's pipelines or equipment, the location of which may create an unsafe condition in view of the equipment to be utilized or the methods of construction to be followed by the Contractor, at Grantee's cost.

Section 4. – Construction and Relocation of Grantee's Facilities; Payment:

All facilities installed or constructed pursuant to this Franchise shall 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.

Grantee shall coordinate the installation, construction, use, operation and relocation of its facilities within the City as appropriate to enable the City to better plan, facilitate and protect public safety and convenience. Without limiting the foregoing, Grantee shall provide reasonable advance notice of work hereunder to the City and any persons who may be affected by such work. Grantee shall provide the City with installation records to facilitate such coordination and shall plan, respond, facilitate and design its facilities in coordination with City input as the City may request or require for its purposes. Without limiting the foregoing, upon reasonable notice by the City of the proposed paving of a public right-of-way, Grantee shall extend its facilities hereunder in order to reasonably avoid the need to subsequently cut the paved right-of-way. Unless reasonably necessary due to emergency or exigent circumstances, Grantee shall not cut any City street for a period of three (3) years following construction, repaving, or widening of such street.

Grantee shall 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 right-of-way and agrees to relocate its facilities, if necessary, to accommodate another facility relocation that has a prior rights interest in the public rights-of-way.

Those phases of construction of Grantee's facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of lines and related facilities herein provided for shall be subject to regulation by the City. Grantee shall keep accurate installation records of the location of all facilities in the public rights-of-way and furnish them to the City upon request. Upon completion of new or relocation construction of underground facilities in the public rights-of-way, Grantee shall provide the City Engineer/Engineering Director with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location. All underground abandoned lines shall continue to remain the property of the Grantee, unless the Grantee specifically acknowledges otherwise to the City Engineer/Engineering Director and such is accepted by the City. Subject to reimbursement under Section 8, Grantee shall remove, at Grantee's sole cost, abandoned lines at the request of the City when required to facilitate construction of any municipal project or as the City

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determines is reasonably necessary to protect public health and safety. Grantee may contract with the City contractor for such removal. Grantee shall maintain installation records pursuant to A.R.S. § 40-360.30.

A. If the City requires the Grantee to relocate Grantee's facilities, which are located in private easements obtained by Grantee prior to the City's acquisition of said property from which the facilities must be relocated, then: a) the costs and expenditures associated with relocating Grantee's facilities shall be borne by Grantee in accordance with Section 8 of this Franchise Agreement, except that b) the cost of purchasing of a new private easement, if necessary, shall be borne by the City provided, however, such relocation is not essential to the health, welfare and safety of the general public. Notwithstanding the foregoing, should the Grantee obtain an easement during (or prior to) the development stage of a parcel, the Grantee shall abandon the easement, and based on final development plans approved by the City, either (at the City's discretion) leave the facility as is, or relocate its utilities elsewhere within the future rights-of-way corridor. The development process is defined as the stage after a pre-application conference with the City, which has occurred on the subject property.

B. Except as covered in Paragraph A above, Grantee shall bear the entire cost of relocating its facilities located on public rights-of-way, subject to Section 8 of this Franchise Agreement, the relocation of which is necessary for the City's carrying out of its governmental functions. All functions of the City, which are not specifically determined by law to be proprietary are governmental. Governmental functions include, but are not limited to, the following:

- (1) Any and all improvements to the City streets, alleys, avenues and City property;
- (2) Establishing and maintaining domestic water systems, sanitary sewers, storm drains, water, and related facilities;
- (3) Establishing and maintaining municipal parks, parking lots (or parking spaces), parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purpose of landscaping any street or public property;
- (4) Providing fire protection and other public safety functions; and
- (5) Collection and/or disposal of garbage and recyclable materials.

C. The City reserves its prior superior right to use the public rights-of-way and City property, including the surface areas, for all public purposes, funded with public funds. When the City uses its prior superior right to the public rights-of-way, or other City property, the Grantee shall move its property that is located in the public rights-of-way, or on other City property, at its own cost, to such location as the City directs.

D. Subject to Section 8, Grantee, shall bear the entire cost of relocating any facilities regardless of the function served, where the City has a prior superior right to use the public rights-of-way, or where the City facilities or other facilities occupying public rights-of-way under authority of a City permit, license or franchise, which must be relocated are already located in the public rights-of-way and the conflict between the Grantee's potential facilities and the existing

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facilities can only be resolved expeditiously as determined by the City, by the movement of the existing City or permittee facilities. The City and the Grantee agree that the City is not a party to disputes among permittees using the public rights-of-way.

E. If the City participates in the cost of relocating Grantee's facilities for any reason, the cost to the City shall be limited to those costs and expenditures reasonably incurred for relocating such facilities in accordance with the City code and, where not in conflict therewith, industry standards. Costs to the City for relocation of Grantee's facilities shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation. Prior to payment by the City, Grantee shall provide an itemization of such costs and expenditures.

F. The 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.

G. Grantee shall reimburse the City for permit fees/costs and for pavement (cut surcharge) damages fees for the location (or re-location) of Grantee's facilities. Reimbursement for permit fees/costs (i.e., plan review, inspection, location services, design costs, etc.) and pavement (cut surcharge) damage fees is separate, and in addition to, any other Franchise fees included in this Agreement.

Section 5. – Indemnification:

The City shall in no way be liable to or responsible for any accident or damage that may occur in the exercise of this Franchise by Grantee of its facilities under this Franchise, and the acceptance of this grant shall be deemed an agreement on the part of Grantee to indemnify and hold harmless the City from and against any and all liability, loss, costs, legal fees, damages or any other expenses, which may be imposed on the City by reason of the acts of the Grantee in the exercise of this Franchise, including the maintenance of barricades and traffic control devices in construction and maintenance areas. Grantee shall defend, indemnify, and save the City harmless from any expenses and losses incurred as a result of injury or damage to third persons occasioned by the exercise of this Franchise by Grantee, provided, however, that such claims, expenses and losses are not the result of any willfully or grossly negligent acts of the City.

Grantee shall have and maintain throughout the term of this Franchise liability insurance and/or a program of self-retention or general assets to adequately insure and/or protect the legal liability of the Grantee with reference to the installation, operation and maintenance of the gas lines, together with all the necessary and desirable appurtenances authorized herein to occupy the public rights-of-way. Such insurance, self-retention or general asset program will provide protection for bodily injury and property damage including contractual liability and legal liability for damages arising from explosion, collapse and underground incidents. Such insurance program and/or program of self-retention or general assets shall comply with the Insurance Requirement recommended by the Risk Manager and approved by the City Manager on file with the City Clerk and as updated by the City Manager during the term of this Franchise.

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Grantee shall file with the City documentation of such liability insurance, self-retention or general asset program within sixty (60) days following the effective date of this Franchise and thereafter upon request of the City.

Section 6. – Restoration of Rights-of-Way:

If, in the installation, use or maintenance of its natural gas transmission and distribution system Grantee damages or disturbs the surface or subsurface of any public road or adjoining public property or the public improvement located thereon, therein, or thereunder, the Grantee shall promptly, at its own expense (subject to Sections 7 and 8 of this Franchise Agreement), and in a manner acceptable to the City, restore the surface or subsurface of the public road or public property, or repair or replace the public improvement thereon, therein, or thereunder, in as good a condition as before such damage or disturbance, or as may be required by construction standards established by the City issued permit in accordance with Chapter 23 of the City code (as amended)

Except due to circumstances beyond Grantee's control, should such restoration, repair or replacement not be completed within a reasonable time or pursuant to the City issued permit or fail to meet the City's duly adopted standards, as may be amended from time to time, the City may, after prior notice to Grantee, perform the necessary restoration, repair or replacement either through its own forces or through a hired contractor, and Grantee agrees to reimburse the City for the expense it incurred in performing the necessary restoration, repair or replacement within thirty (30) days after receipt of an invoice from the City.

Section 7. – Franchise Fee:

Grantee shall pay to the City in consideration of the grant of this Franchise a sum equal to two percent (2%) of its gross revenues derived from the sale at retail by it of natural gas (as defined in Section 2, above) for residential, commercial and industrial purposes/customers, within the present or any future corporate limits of the City as shown by Grantee's billing records. Such payments are to be due and payable monthly and postmarked on or before the twentieth (20th) calendar day from the end of the preceding month in which the franchise fee accrues. In the event the payment is received later than the last business day of the month, a five percent (5%) penalty shall be added to payments not made within the required time, and interest of one point five percent (1.5%) monthly shall accrue on the entire amount due. The interest and penalty may be waived by the City if the failure to postmark by the due date was the result of a casualty that renders Grantee unable to compute or estimate the liability from the business records. For the purpose of verifying amounts payable hereunder, the books and records of Grantee shall be subject to inspection or audit by duly authorized officers or representatives of the City at reasonable times.

Grantee shall pay Franchise Fees pursuant to the terms of the previously executed Franchise Agreement between Grantee and the City through May 13, 2005. Beginning May 14, 2005, payment as described in the preceding paragraphs shall be payable in monthly amounts within

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twenty (20) days after the end of each calendar month.

Notwithstanding the provisions of this Franchise, if at any time Grantee is paying any municipality in the State of Arizona a Franchise Fee greater than two percent (2%) of Grantee's gross receipts in such municipality, then, the percentage set forth in this Section 7 shall be automatically increased to match the greater percentage amount Grantee is paying to such other municipality pursuant under a franchise agreement.

In addition to the foregoing Franchise Fees, Grantee shall pay charges, taxes, and fees as described in Section 8 of this Agreement.

Section 8. – Additional Fees and Taxes:

Notwithstanding any provision contained herein to the contrary, Grantee shall pay, in addition to the payment provided in Sections 4G and 7, 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 law and collected by Grantee for its retail sales from users and consumers of natural gas within the present and any future corporate limits of the City, without reduction or offset;
- (c) other charges, taxes (except transaction privilege and use tax mentioned above) 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 businesses operated within the City; and
- (d) applicable and customary permit and inspection fees (i.e., plan review, inspection, location services, design costs, etc.) and pavement (cut surcharge) damage fees, established by ordinance of the City, necessary for the construction, installation, and other work to be conducted by Grantee hereunder.

In addition to and separate from the Franchise Fee set forth above, the City and the Grantee agree that the City shall assess additional compensation to be paid by Grantee to the City in monthly payments in the amount equal to two percent (2%) of the gross revenues of Grantee as defined in Section 7 of this Agreement. The City shall place all funds collected from Grantee due to such additional compensation in a special fund labeled "Capital Expenditures Fund." Upon presentation to the City of documentation by Grantee of the Grantee's incurring of such capital expenditures and approval by the City, the City shall pay the Grantee within thirty (30) days of such approval, if the amount of money in the Capital Expenditures Fund is sufficient to pay the approved capital expenditures. In the event there is a surplus of the Capital Expenditures Fund after the City pays Grantee, such surplus shall be set aside for the City.

The Grantee shall provide the City assurances that the payments by the City from the Capital Expenditures Fund will not result in Grantee adding such reimbursed capital expenditures to

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its rate base or seeking a return on investment for such reimbursed capital expenditures.

To the extent that the additional compensation generated by this section is insufficient to cover the anticipated capital expenditures, the City and Grantee shall agree to modify the additional compensation to generate sufficient funds to meet the reasonable capital expenditures in the future years plus any expenditures approved, but not paid due to lack of funds in the Capital Expenditures Fund. The Grantee assures the City that all taxes and other fees or charges shall remain combined and bundled as “taxes and other fees” or “taxes and other charges” on Grantee’s invoices/statements unless mandated otherwise by law.

For purposes of this Franchise Agreement, capital expenditures subject to reimbursement by the City, consist of any cost or expenditure required by this Franchise Agreement or any ordinance adopted by the City related to this Franchise Agreement, including without limitation, fees and costs for permanent and temporary relocations and general construction for natural gas mains, vaults, and laterals; fees and costs associated with backfilling, compaction, pavement cutting, surface restoration repair or replacement: line location, line exposure, traffic control; and permit fees, plan review fees, design fees and inspection fees.

Section 9. – Term:

This Franchise shall continue and exist for a period of twenty-five (25) years from the day of May 14, 2005; provided, however, that if at any time Grantee is paying to any municipality in the State of Arizona a Franchisee Fee greater than two percent (2%) of Grantee’s gross receipts in such municipality, then the percentage set forth in Section 7 shall be increased to match such greater percentage amount payable to such municipality and provided further that, if at any time Grantee provides other enhancements or benefits to any municipality in the State of Arizona, then such enhancements or benefits shall also be provided to the City.

The right, privilege and franchise hereby granted shall continue and exist for a period of twenty-five (25) years; provided, however, that either party may terminate this Franchise on its tenth (10th) anniversary by giving written notice of its intention to do so not less than one (1) year before the date of termination. If such notice is given for the purpose of negotiating a new franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election.

Section 10. – Franchise; Non-Exclusive:

This Franchise is not exclusive, and nothing contained herein shall be construed to prevent the City from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 11. – Conflicting Ordinances:

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Grantee agrees, insofar as the applicable provisions of the City Charter and City code existing at the time that this Franchise becomes effective are legally enforceable and constitute valid requirements, to comply therewith in all respects and to that end said provisions of the City Charter and City code are hereby made a part of this Franchise as though fully set forth herein.

Section 12. – Independent Provisions:

If any section, paragraph, clause, phrase or provision of this Franchise Agreement, other than Section 7, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise Agreement as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional. If Section 7 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, this Franchise Agreement shall immediately terminate and shall be of no further force or effect.

Section 13. – City Reserves Certain Powers:

As required by the Peoria City Charter, the City expressly reserves unto itself, subject to the limitations of the Constitution and laws of Arizona, certain powers which may be necessary or convenient for the conduct of its municipal affairs, and for the health, safety, and general welfare of its inhabitants, including, among other things, the right to pass and enforce ordinances to require proper and adequate extensions of the service of the grant hereby made, and to protect the public from danger or inconvenience in the operation of any work or business authorized by the grant of this Franchise, and the further right to make and enforce all such regulations as shall be reasonably necessary to secure adequate, sufficient and proper service, extensions and accommodations for the people and insure their comfort and convenience.

Section 14. – No Waiver or Limitation of Condemnation; Right Reserved by the City:

The City reserves the right and power to purchase or condemn the plant and distribution facilities of Grantee within the City's corporate limits or any additions thereto, as provided by law.

Section 15. – Assignment of Franchise:

The right, privilege and franchise hereby granted may not be leased, assigned, transferred or otherwise alienated in whole or in part by the Grantee, its successors and assigns, without the prior consent of either the City or (if applicable) the Arizona Corporation Commission, such prior consent from the City will not be unreasonably withheld. No consent shall be required in connection with an assignment made as security pursuant to a mortgage or deed of trust or in connection with a subsequent transfer made pursuant to any such instrument.

Section 16. – Franchise Agreement/Ordinance:

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This Franchise Agreement/Ordinance is subject to the approval of the electors of the City. Grantee shall reimburse the City for all of the costs the City incurs in conducting the franchise election, except that, if one or more additional propositions are presented to the electors at such election, Grantee shall pay only that portion of the expense determined by dividing all of the City’s expenses by the number of issues presented on the ballot.

Section 17. – Effective Date:

This Franchise shall be and become in full force and effect from May 14, 2005 until May 14, 2030, and after its approval by the majority of the qualified electors residing within the corporate limits of the City and voting thereon at a special municipal election to be held in the City for that purpose.

Section 18. – Notices:

Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall 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:

- A. To the City (2 copies):

City Clerk	City Attorney
City of Peoria	City of Peoria
8401 West Monroe Street	8401 West Monroe Street
Peoria, Arizona 85345	Peoria, Arizona 85345

- B. To Southwest Gas:

Southwest Gas Corporation
Legal Affairs Department
10851 North Black Canyon Highway
Phoenix, Arizona 85029-4755

Section 19. – Execution:

We, the undersigned, have executed this document in accordance with the results of the City of Peoria Special Election on November 8, 2005, on the dates below written.

CITY OF PEORIA, an Arizona

SOUTHWEST GAS CORPORATION, a municipal

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corporation

California corporation

By _____
John C. Keegan, Mayor

By _____

Date: _____

Date: _____

ATTEST:

Mary Jo Kief, Peoria City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, Peoria City Attorney