

RESOLUTION 20-17

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, PINAL COUNTY, ARIZONA, DECLARING THAT THE CITY COUNCIL DEEMS THE GRANTING OF A CERTAIN FRANCHISE BENEFICIAL FOR THE CITY OF MARICOPA; ORDERING AN ELECTION TO BE HELD ON THE 3RD DAY OF NOVEMBER, 2020, AT WHICH ELECTION THERE SHALL BE SUBMITTED TO THE VOTERS OF THE CITY OF MARICOPA THE QUESTION AS TO WHETHER OR NOT SAID FRANCHISE SHALL BE GRANTED TO SOUTHWEST GAS CORPORATION.

WHEREAS, Southwest Gas Corporation desires to obtain a franchise with the City of Maricopa in the form attached hereto as Exhibit A; and

WHEREAS, the City of Maricopa has determined that the granting of the proposed franchise for Southwest Gas Corporation is beneficial to the City; and

WHEREAS, the City of Maricopa, at the request of Southwest Gas Corporation, desires to conduct an election for the purpose of submitting to the electors of the City of Maricopa the question of whether the proposed franchise shall be granted.

NOW BE IT RESOLVED by the Mayor and City Council of the City of Maricopa as follows:

Section 1. That the Mayor and City Council of the City of Maricopa deem the granting of a Franchise Agreement to Southwest Gas Corporation in the form attached hereto as Exhibit A is beneficial to the City of Maricopa and the City residents.

Section 2. That an election is hereby called and ordered to be held in the City of Maricopa on November 3, 2020 for the purpose of submitting to the electors of the City of Maricopa the question as to whether the franchise under the terms and conditions of the above referenced agreement shall be granted to Southwest Gas Corporation.

Section 3. That this franchise election be held pursuant to the provisions of the Arizona Constitution and laws of the State of Arizona and City Code of the City of Maricopa.

Section 4. That the ballots used at said election shall be substantially in the following form:

SHALL THE PROPOSED FRANCHISE FOR A PERIOD OF UP TO TWENTY-FIVE (25) YEARS BE GRANTED TO SOUTHWEST GAS CORPORATION FOR THE USE OF CITY RIGHTS-OF-WAY FOR GAS UTILITY PURPOSES?

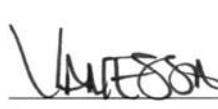
Section 5. That the City Clerk and City Manager are hereby authorized and directed to publish the proposed franchise and take such other actions required by law to conduct the election.

PASSED AND ADOPTED by the Mayor and Council of the City of Maricopa, Arizona, this 2nd day of June, 2020.



Christian Price
Mayor

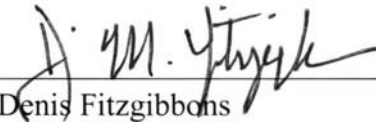
ATTEST:



Vanessa Bueras
City Clerk



APPROVED AS TO FORM:



Denis Fitzgibbons
City Attorney

**FRANCHISE AGREEMENT
BETWEEN
SOUTHWEST GAS CORPORATION
AND
THE CITY OF MARICOPA, ARIZONA**

Section 1 – Grant of Franchise

The City of Maricopa, 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 shall be January 1, 2021. This Franchise shall 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, 2045.

2.2 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 reopen any or all sections for further review and possible amendment of this Franchise, on its fifth (5th) or twelfth (12th) anniversary, by giving written notice of its intention to do so not less than one (1) year before the fifth (5th) or twelfth (12th) anniversary. Absent an amendment to this Franchise executed by the parties and modifying the terms hereof, the terms of this Franchise shall remain unchanged and continue in full force and effect for the term set forth in Section 2.1.

Section 3 – Construction

3.1 Grantee shall perform all construction under this Franchise in accordance with established industry standards. Before Grantee makes any installations in the Public Rights-of-Way, Grantee

shall apply for and obtain from City of Maricopa such permit or permits as are required by City of Maricopa to be issued for other similar construction or work in the Public Rights-of-Way; provided, however, Grantee shall 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 action is required, Grantee shall advise City of Maricopa of the work performed to maintain its system and apply for a permit as soon as is practicable.

3.2 Upon reasonable notice by City of Maricopa of the proposed paving of a Public Right-of-Way, Grantee shall review the City of Maricopa's proposed paving plan and, if warranted in the Grantee's judgment, extend or replace its Gas System Facilities in order to reasonably avoid the need to subsequently cut the paved Public Right-of-Way.

3.3 Construction of Grantee's Gas System Facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of Grantee's Gas System Facilities pursuant to this Franchise Agreement shall be subject to regulation by the applicable provisions of the City of Maricopa Municipal Code in place at the time of installation. If a provision of the City of Maricopa Municipal Code is superseded by Title 40 of the Code of Federal Regulations or any other applicable federal or Arizona state law, rule, order, or regulation, then Grantee and City of Maricopa agree that Title 40 of the Code of Federal Regulations or the other applicable federal, or Arizona state law, rule, order or regulation shall govern. Pursuant to A.R.S. § 40-360.30 and any other applicable law, Grantee shall maintain installation records of the location of all its Gas System Facilities in the Public Rights-of-Way. Grantee's Gas System Facilities are defined as critical infrastructure by the federal government and as such, City of Maricopa agrees that records of the location or design of natural gas facilities are proprietary to Grantee and City of Maricopa shall not release nor make available any records to any outside party without the express, written permission of Grantee.

3.4 Grantee shall not install, construct, maintain or use its Gas System Facilities in a manner that damages or interferes with any existing facilities of another utility located in the Public Right-of-Way.

3.5 Upon request, Grantee shall provide the City of Maricopa with, on an annual basis, its known proposed capital plan and reasonably foreseeable future corridor plans for all improvements in the City of Maricopa's planning area. The City of Maricopa shall provide Grantee with its proposed capital improvement plan on an annual basis.

3.6 If City of Maricopa undertakes, either directly or through a contractor, any construction project adjacent to Grantee's Gas System Facilities, City of Maricopa 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 Gas System Facilities, 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 City of Maricopa's contractor, at City of Maricopa's cost.

Section 4 – Restoration of Public Rights-of-Way

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, then Grantee shall restore the surface or subsurface of the public road or public property as required by construction standards in effect at that time. Unless otherwise provided for herein, Grantee shall be responsible for the costs of the restoration. Nothing in this Franchise

shall be construed as constituting a contractual obligation on the part of Grantee that assumes jurisdiction over, or an obligation to maintain, such public road, public property or public improvement thereon.

Section 5 – Franchise Fee

5.1 In lieu of any license fees, permit fees, taxes or other fees or surcharges (including but not limited to plan review fees, inspection fees, and pavement cut surcharges) being imposed on Grantee by City, and in consideration of the grant of this Franchise, Grantee shall pay to City a sum equal to two percent (2%) of the Grantee's Gross Revenue from the sale and/or delivery of gas by Grantee 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 forty-five (45) days after the end of the calendar quarter, and will be considered late if not received within forty-five (45) days of the due date.

5.2 A five percent (5%) penalty will be added to payments not made within the require time. This penalty can be waived by the City for reasonable cause.

Section 6 — Additional Fees and Taxes

Notwithstanding any provision to the contrary herein, Grantee shall, 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 of Maricopa:

- A. General ad valorem property taxes;
- B. Transaction privilege and use tax authorized by City of Maricopa ordinance and billed by Grantee from users and consumers of gas within the corporate limits of the City of Maricopa, without reduction or offset;
- C. Other charges, taxes or fees levied upon businesses generally through the City of Maricopa 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 of Maricopa.
- D. Overtime charges related to inspections that occur after business hours, on weekends, or during Federal holidays.

Section 7 – Relocation of Facilities

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

function project provided that the location at which the facilities to be installed as part of the City of Maricopa project are to be placed directly coincides with the physical location of Grantee's Gas System Facilities and such conflict cannot be avoided by the City of Maricopa with reasonable and diligent efforts. In the event the governmental function project is paid for totally or in part with non-City of Maricopa funds, then Grantee's costs of moving its Gas System Facilities shall be borne by the source of the non-City of Maricopa funds or the City of Maricopa in the same ratio as the non-City of Maricopa funds bear to the total project cost.

7.2 City of Maricopa 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 of Maricopa governmental function project (or are in direct, physical conflict but such conflict could have been avoided by the City of Maricopa with reasonable and diligent efforts); or (b) the relocation of which is necessitated by the construction of improvements by or on behalf of City of Maricopa in furtherance of any project other than a governmental function project funded with City of Maricopa funds.

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

7.4 If City of Maricopa requires Grantee to relocate Grantee's Gas System Facilities that are located in a private easement then the costs and expenditures associated with purchasing a new private easement and relocating Grantee's Gas System Facilities shall be paid by City of Maricopa.

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

7.7 City of Maricopa 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. If City of Maricopa requires Grantee to relocate Grantee's facilities to avoid conflict with the installation or relocation of other utility facilities, then the costs and expenditures associated with relocating Grantee's facilities shall be paid by the City of Maricopa.

7.8 All underground abandoned lines shall continue to remain the property of the Grantee, unless the Grantee specifically acknowledges otherwise to the City of Maricopa Engineer and such is accepted by the City of Maricopa. Grantee shall remove, at Grantee's sole cost, abandoned lines at the request of City of Maricopa when Grantee's Gas System Facilities are in direct, physical conflict with a City of Maricopa governmental function project that is funded with City of Maricopa funds. In the event the governmental function project is paid for totally or in part with non-City of Maricopa funds, then the Grantee's costs of moving the underground abandoned lines shall be paid by the source of the non-City of Maricopa funds or the City of Maricopa in the same ratio as the non-City of Maricopa funds bear to the total project cost. Grantee may contract with City of Maricopa 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

City of Maricopa shall not be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its Gas System Facilities under this Franchise, and the acceptance of this Franchise shall be deemed an agreement on the part of Grantee to indemnify and hold harmless the City of Maricopa from and against any and all liability, loss, costs, damages or any other expenses, which may be imposed on the City of Maricopa by reason of the negligence, default or misconduct of Grantee in the exercise of this Franchise; provided that such claims, expenses and/or losses are not the result of any willful or grossly negligent acts or omissions of City of Maricopa, and Grantee shall receive from City of Maricopa full, complete and prompt notice of any and all such claims or demands as are hereby indemnified.

Section 9 – Consent to Assignment

The right, privilege and franchise hereby granted may be assigned by Grantee, its successors and assigns, in whole or in part, to any person certified by the Arizona Corporation Commission to assume the duties and obligations of Grantee hereunder.

Section 10 – Franchise: Non-Exclusive

This Franchise is non-exclusive, and nothing contained herein shall be construed to prevent City of Maricopa 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 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:

To the City of Maricopa: City of Maricopa
Attn: City Manager
39700 W. Civic Center Plaza
Maricopa, AZ 85138

With a copy to: City of Maricopa
Attn: City Attorney
39700 W. Civic Center Plaza
Maricopa, AZ 85138

To Southwest Gas Corporation: Public Affairs Department

Southwest Gas Corporation
1600 E. Northern Ave
Phoenix, AZ 85020

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 is subject to the approval of the qualified electors of the City.

Section 13 – Independent Provisions

If any section, paragraph, clause, phrase or provision of this Franchise shall be adjudged invalid or unconstitutional, the same shall 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 shall 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 shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall 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 of Maricopa and Grantee each shall designate and appoint a representative to act as a liaison between the City of Maricopa and its various departments and Grantee. The initial representative for the City of Maricopa shall be the City of Maricopa Manager and the initial representative for Grantee shall be its project manager, as identified by Grantee from time to time. The parties' representatives shall be available at all reasonable times to discuss and review the performance of the parties under this Franchise.

14.3 If a dispute between the parties arising out of this Franchise cannot be resolved by the parties, City of Maricopa and Grantee agree to attempt resolution through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the Presiding Judge of the Pinal County Superior Court to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

Section 15 – Audit Rights

15.1 During the term of this Franchise, City of Maricopa has the authority, at City of Maricopa's expense, to conduct an audit of the Grantee's pertinent books and records to verify gross revenue for the prior calendar year. The audit shall be conducted in such a way as not to disrupt Grantee's business operations. This audit shall not be required more than once in a single 12-month period.

15.2 Grantee shall pay to the City of Maricopa within 45 days written notice any amounts that are due to the City of Maricopa as determined by any such audit of Grantee's books and records. Reimbursement for underpayment as a result of audit findings shall be identified as late payments and are subject to late payment interest of 12% per year.

15.3 If an audit determines Grantee has underpaid the City by 10% or more of amounts due (excluding penalties), Grantee will reimburse the City for the cost and expenses related to the audit.

We, the undersigned, Mayor and City of Maricopa Council of the City of Maricopa, Arizona, pass and adopt this Franchise Agreement this ____ day of _____.

CITY OF MARICOPA

SOUTHWEST GAS CORPORATION
A California Corporation

By: _____
Christian Price, Mayor

By: _____
Julie Williams, VP Southern Arizona Division

Date: _____

Date: _____

ATTEST:

Vanessa Bueras, City of Maricopa Clerk

APPROVED AS TO FORM:

_____, City of Maricopa Attorney