



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 9/17/2024

* = Mandatory, information must be provided

or Procurement Director Award:

***Contractor/Vendor Name/Grantor (DBA):**

Southwest Gas Corporation, a public utility company

***Project Title/Description:**

Non-Exclusive Franchise Agreement with Southwest Gas Corporation.

***Purpose:**

Pima County to grant a Non-Exclusive Franchise Agreement to operate natural gas facilities within public rights-of-way. (LIC-0230)

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

SWG, a public utility company, will have the privilege to install, maintain, and operate natural gas facilities within the public rights-of-ways within Pima County and outside the confines of any incorporated city or town as required by A.R.S. 40-283.

***Public Benefit:**

SWG, a public utility company may apply for and obtain permits from Pima County Development Services for activities related to installation, maintenance and operation of natural gas facilities within public rights-of-way.

***Metrics Available to Measure Performance:**

SWG, a public utility company will have the rights to operate natural gas facilities in the County rights-of-way according to standards and provisions set forth in the Non-Exclusive Franchise Agreement

***Retroactive:**

No.

To: COB, 9-4-24 (2)
Vers.: 0
pgs.: 10

SEP04:24AM0903 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: SC Department Code: RPS Contract Number (i.e., 15-123): SC2400002268
Commencement Date: 9/17/2024 Termination Date: 09/16/2049 Prior Contract Number (Synergen/CMS):
Expense Amount \$ Revenue Amount: \$ 0.00

*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):
Amendment No.: AMS Version No.:
Commencement Date: New Termination Date:
Prior Contract No. (Synergen/CMS):

Expense Revenue Increase Decrease

Amount This Amendment: \$

Is there revenue included? Yes No If Yes \$

*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):
Commencement Date: Termination Date: Amendment Number:

Match Amount: \$ Revenue Amount: \$

*All Funding Source(s) required:

*Match funding from General Fund? Yes No If Yes \$ %

*Match funding from other sources? Yes No If Yes \$ %

*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Jeffrey Teplistky
Department: Real Property Services

Telephone: 724-6306

Department Director Signature: Date: 8/26/2024

Deputy County Administrator Signature: Date: 9/13/2024

County Administrator Signature: Date: 9/13/2024

For Recorder's Use Only

SC2400002268

PIMA COUNTY

NON -EXCLUSIVE FRANCHISE AGREEMENT WITH SOUTHWEST GAS CORPORATION

FRANCHISE

WHEREAS, pursuant to, A.R.S. § 40-283 and A.R.S. § 11-251(4), Southwest Gas Corporation, a public utility company, (hereinafter "Utility") has applied to the Board of Supervisors of Pima County, Arizona, (hereinafter "County") for the right and privilege in the area of the County outside the confines of any incorporated city or town to construct, install, maintain and operate in the public right-of-way facilities and appurtenances for the purpose of natural gas service and operations; and

1. Grant of Permission. In consideration of Utility's agreement to abide by the promises contained herein and consistent with the laws of the State of Arizona, County hereby grants the right, as provided herein, to Utility to use all County public rights-of-way within Pima County lying outside the confines of any incorporated city or town to construct, install, maintain and operate its natural gas facilities, in such public rights-of-way ("Facilities"). "Rights-of-way" includes public streets, roads, alleys, bridges, highways, and other relevant infrastructure except federal and state highways within the unincorporated areas of Pima County.
2. Term. The Effective Date of this Franchise is Sept. 17, 2024. 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, or pursuant to Section 11 herein. This Franchise may be renewed upon application of Utility and approval by County subject to additional requirements and conditions.

3. County rights paramount. The rights of County in and to the use of public rights-of-way are forever paramount and superior to Utility's rights under the Franchise.

3.1 To the extent permitted by law, County reserves the right to impose future restrictions and limitations upon the exercise of the rights granted herein as it deems best for public safety and welfare. Utility is further required to comply with all lawful applicable ordinances of Pima County regulating conduct or work within the public rights-of-way, such as ordinances that are now enacted or may be amended or adopted from time to time.

4. No exclusive right. Nothing in this Franchise will be construed to grant Utility an exclusive right to construct and maintain its Facilities in the public right-of-way. Facilities of Utility must be constructed so as not to interfere with the reasonable use of the public right-of-way by others. The location of Facilities of Utility is not a vested interest and its facilities must be removed, relocated or abandoned in place by Utility to the extent required pursuant to Section 8, below. County expressly reserves the right to grant, from time to time, similar franchises, licenses and privileges over the same right-of-way to the extent not inconsistent with Utility's rights hereunder.

5. Construction. Utility, its agents, employees, or contractors, must perform all construction under this Franchise in accordance with established industry standards and in the manner prescribed by County in applicable Pima County Zoning Codes, Pima Association of Governments (PAG) 2015 Standard Specifications and Details for Public Improvements and Pima County Supplemental Standards and Details that supersede corresponding PAG Details, as may be amended and subject to the supervision of County, in strict compliance with all laws, ordinances, rules, and regulations of federal, state, and local governments.

5.1 Before beginning any construction for installation of Utility's Facilities, Utility is required to, as part of the right-of-way permit application process, submit a plan of proposed construction to the Pima County Engineer and must not commence any construction until the right-of-way Permit has been approved and issued by the County Engineer or their designee.

5.2 No construction, reconstruction, repair, or relocation under this Franchise will be commenced until written permits have been obtained from proper County officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures, highways, streets, or rights-of-way and for the proper restoration of such structures, highways, streets, or rights-of-way, for the protection of the public and the continuity of pedestrian and vehicular traffic.

5.3 Notwithstanding anything to the contrary in this Section 5, Utility will have the right to undertake without delay such emergency activities necessary to provide for and maintain the reliability and safety of its Facilities. If such action is required, Utility must advise County of the work performed to maintain its system and apply for a permit within 24 hours of commencing such emergency activities.

5.4 The location and construction of Utility's Facilities in public right-of-way must conform to applicable industry standards then in effect and as may be directed by County in order not to interfere with use of the public right-of-way. All Facilities of Utility must be located so as to cause minimum interference with the proper use of the public right-of-way and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin the public right-of-way.

5.5 Any opening or obstruction in the public right-of-way made by Utility in the course of the construction, maintenance, operation, repair, replacement or removal of its Facilities must be guarded and protected at all times by the placement of adequate barriers, the bounds of which during periods of dusk and darkness must be clearly designated by warning lights. Any work performed by Utility along a public highway open for travel must be properly signed and marked with warning and directional devices in accordance with A.R.S. § 28-650 and the Arizona Department of Transportation Temporary Traffic Control Design Guidelines, September 2019, as amended now and in the future and Section 701, Maintenance and Protection of Traffic, Pima Association of Governments Standards and Specifications for Public Improvements and as modified by the Pima County Supplemental Specifications for Public Improvements.

5.6 During construction or excavation in the public right-of-way, Utility is required to provide proper drainage so that the public right-of-way is free from standing surface water and properly and adequately drained so as not to cause flood or erosion damage to the facilities of County or surrounding property.

5.7 In the construction, maintenance, repair and operation of its Facilities, Utility will not alter, damage, or disturb, in any way, a County highway, roadway, or street without prior approval. Utility must use all necessary care to avoid causing or permitting any damage, disturbance, alteration, or modification to the facilities of County. If in the construction, maintenance, repair or operation of Utility's Facilities the Utility causes or permits any damage, disturbance, alteration or modification to a County highway, roadway, or street, Utility, at its expense and in accordance with the most recent Pima County Roadway Design Manual and Pima Association of Governments (PAG) Standard Specifications and Details for Public Improvements, will restore, to the satisfaction of County, the roadway or facilities to a condition substantially similar to which they were before being damaged, disturbed, altered or modified and will also be liable to County or others for any other damages which may accrue because of said damage, disturbance, alteration or modification. The restoration must be initiated promptly and completed expeditiously in recognition of the duty of Utility to give the restoration, repair or replacement of County roadway or facilities priority over proceeding with non-emergency activities of Utility.

5.8 Utility must avoid causing any damage to or disturbance of existing vegetation in the public right-of-way. If Utility causes or permits any such damage or disturbance, Utility, at its sole expense and in accordance with all County regulations then in effect, including but not limited to the provisions of Section 18.73.030B(12) of the Zoning Code of County, is required to re-vegetate the right-of-way to the reasonable satisfaction of the County Engineer.

6. Installation Records. Pursuant to A.R.S. § 40-360.30, and any other applicable law, Utility is required to maintain installation records that identify all of Utility's Facilities by type and location within the public rights-of-way. Utility will make such installation records available to County upon County's request and without cost to County. County agrees that records of the location or design of Utility's Facilities may be defined as critical infrastructure by the federal government and as such, County agrees that records of the location or design of Utility's Facilities are proprietary to Utility and County will not release nor make available any records to any outside party without the express, written permission of Utility.
7. Access to adjoining property. Utility must provide prior written or actual notice to the owners or residents of adjoining property of any activity of Utility which may temporarily interfere with access to or use of said adjoining property in compliance with applicable County ordinance, regulation, and

permit conditions for Utility's work in County's Public Rights-of-Way. If an emergency precludes the provision of prior notice, Utility must provide actual notice to the owners or residents of the adjoining property as soon as reasonably practicable.

8. Relocation of Facilities. Nothing in this Franchise will be construed to prevent County from abandoning, altering, improving, repairing, or maintaining County Facilities or the public right-of-way and, for that purpose, requiring Utility at its own expense to remove, relocate or abandon in place Utility's Facilities that are in direct, physical conflict with County facilities that will be installed as part of a County governmental function project consistent with the County's legal authority under state law to such location as the County and Utility agree. "Utility Facilities" means any physical object or improvement, or alteration of a right-of-way owned, possessed, made, installed, or constructed by Utility or made, installed, or constructed by County or others at the request of Utility. "Utility Facilities" includes, but is not limited to, pipes, pipelines, mains, services, vaults, casings, sleeves, vents, fences, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances, poles, wires, cables and other property or equipment used or useful for the purpose for which this Franchise is granted. "County Facilities" means any physical object or improvement, including all highway, transportation, flood control, wastewater, and any other County Facilities owned or possessed by County, regardless of whether such object or improvement is maintained, installed, or constructed by County or others at the request of County. Utility's Facilities shall be deemed to be in direct, physical conflict with County Facilities if the Utility Facilities are within the radius of conflict identified in the PAG Standard Specifications and Details for Public Improvements in place at the time of the conflict.

8.1 Utility must relocate at its expense all Utility Facilities that are in direct, physical conflict with County use, improvement, or abandonment of the public right-of-way. The facilities must be relocated in accordance with the procedures and time limitations set forth in Pima County Code Chapter 10.44, as amended. If the facilities are not relocated in accordance with Pima County Code Chapter 10.44, County may, at its discretion, but only after a reasonable opportunity to cure is provided to Utility in accordance with Section 8.3, relocate the facilities utilizing a qualified contractor and Utility will be liable for all costs to County of relocation including overhead and maintenance costs.

8.2 If County requires Utility to relocate Facilities of Utility that are located in a private easement, then the costs and expenditures associated with purchasing a new private easement and relocating Facilities of Utility will be paid by County.

8.3 Within one hundred and twenty (120) days (or a longer period if agreed to by County) after receiving written notice from County of needed changes or corrections in Utility Facilities and upon the failure of Utility to make such changes or corrections as set forth herein, or to correct any damage to any public street, alley, highway or right-of-way within the Franchise Area caused directly or indirectly by Utility, its agents, employees or contractors, County shall have the right to make, or cause such changes or corrections to be made at the expense of Utility. In the event that any changes, corrections or repairs are deemed an emergency by County, Utility, upon receipt of notice of such an emergency, must make such changes, corrections or repairs deemed necessary by County to provide for health and safety concerns. In the event that Utility does not make the necessary changes, corrections or repairs within a reasonable period of time, County may make or cause such changes, corrections or repairs to be made at the expense of Utility. Any expenses incurred for such changes, corrections or repairs will be due and payable within thirty (30) days of written demand by County to Utility.

8.4 County is not liable to Utility for any costs of relocation, replacement, repair, or abandonment of Facilities of Utility in public Rights-of-Way or lost revenues, sustained by Utility because of damage, modification or alteration to or destruction of its facilities in the public Rights-of-Way, except as otherwise provided herein or with respect to an issued judgment or ruling arising from County's negligence or willful misconduct, and to the extent consistent with A.R.S. §§ 12-820.01 and 12-820.02.

8.5 County will not exercise its right to require Facilities of Utility to be relocated in an unreasonable or arbitrary manner, or to avoid its obligations under this Franchise.

9. County permits; no authorization of wrongdoing. This Franchise does not constitute a County permit for right-of-way use. Except in emergency circumstances as provided in Section 5.3, nothing in this Franchise relieves Utility from its duty to obtain all applicable permits for right-of-way use from the appropriate County departments. Utility must construct the proposed facilities in accordance with the plans submitted to County, except in emergency circumstances as provided in Section 5.3. County review or approval of plans or specifications or issuance of a permit for an activity or an installation, construction or location of a facility of Utility, or the failure of County to direct Utility to take any precautions or make any changes or to refrain from doing anything, will not be construed to be an authorization for or approval of any violation of an industry standard pertaining to the location or construction of a facility in a public right-of-way. No review, approval or permit presuming to give such authority will relieve Utility of its obligations under this Franchise regarding the location and construction of facilities. The failure of County to direct Utility to take any precautions or make any changes or to refrain from doing anything, will not excuse Utility from its responsibilities hereunder to County or others for injury to persons or damage to property.
10. Compliance with Highway Safety. Construction of the Facilities of Utility must not interfere with the safety of the traveling public or the authorized public use of right-of-way, and may not otherwise interfere with the general health, safety, and welfare of the citizens of Pima County. Once constructed, the Facilities of Utility must be maintained by Utility so as not to interfere with safe sight distance or safe travel along the right-of-way.
11. Termination of Franchise for Cause. Upon receipt of written notice from County of a default by Utility of any of its obligations under this Franchise, Utility will be given one hundred twenty (120) days from receipt of such written notice to cure or remedy the default provided in the written notice from County. If Utility does not cure the default within the one hundred twenty (120) daytime period, County shall have the right to terminate this Franchise and all rights of Utility hereunder. Notwithstanding anything to the contrary herein, no such termination shall occur without first affording Utility at least one hundred twenty (120) days prior written notice, a reasonable opportunity to cure, and notice of termination will be placed on a regular County Board of Supervisors agenda for ~~final County Approval.~~ Utility is to remove its facilities from the right-of-way at no expense to County and to the satisfaction of County within one hundred twenty (120) days of the date of mailing of the written failure to cure notice. Utility must restore the right-of-way to the condition mutually agreed upon. If Utility does not restore the right-of-way within the one hundred twenty (120) days allotted, County may restore the right-of-way at the expense of Utility. Any expenses incurred will be due and payable within thirty (30) days of written demand by County to Utility.
12. Indemnification; hold harmless; defend. Utility assumes responsibility and liability for any injury or damage to the above-described right-of-way or to any person to the extent caused by or resulting

from the negligent acts, omissions or willful misconduct of Utility in the exercise of this Franchise. To the fullest extent allowed by law, the Utility shall indemnify, defend and hold the County, its governing board or body, officers, departments, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature ("Claims"), which may be incurred by the County by reason of the negligence, default or misconduct of Utility in the exercise of this Franchise; provided that such Claims are not the result of any willful or negligent acts or omissions of County, its employees, officers, agents, contractors or representatives, and Utility shall receive from County full, complete and prompt notice of any and all such Claims as are hereby indemnified. The obligations under this Article shall not extend to the negligence of the County, its agents, or employees. This indemnity shall survive the termination of this Franchise.

13. **Insurance. Utility shall provide the County with and maintain in full force throughout the term of this Franchise by the Utility or Utility's assignees liability insurance. This Franchise shall be subject to termination if insurance lapses. The insurance policy should comply as follows:**

13.1. Commercial General Liability insurance; including coverage for contractual liability; products and completed operations; and explosion, collapse, and underground; with limits not less than \$5,000,000, combined single limit.

13.2. Commercial Automobile Liability insurance covering owned, non-owned, and hired vehicles used in connection with this Franchise, with limits not less than \$5,000,000.

13.3. Primary Insurance: The Utility's policies shall stipulate that the insurance afforded the Utility shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be non-contributory.

13.4. The Commercial General Liability insurance and Commercial Automobile insurance policies shall be endorsed to include Pima County as an additional insured. 13.5. Upon written request the insurer, broker, or agent shall provide certificates of insurance indicating the required insurance coverage and endorsements (or a letter certifying self-insurance) to Pima County Real Property Services. The certificate of insurance shall be reasonably similar to and contain at least the same information as an ACORD form certificate of insurance. All insurance policies shall include a sixty (60) day notice of cancellation or material change of coverage endorsement. Utility shall immediately forward a copy of any notice of cancellation or material change of coverage to Pima County Real Property Services in addition to any notice provided by the insurer or its representative.

13.6. Utility shall be solely responsible for all premiums, deductibles, or self-insured retentions due and payable for insurance required in this Paragraph.

13.7. Notwithstanding anything to the contrary herein, Utility may satisfy any and all required coverages hereunder through insurance, self-insurance, or a combination thereof.

14. **County participation in suit, action or proceeding. County will have the right, at all times, at its own expense, to take part in any suit, action or proceeding instituted by or against Utility (a) in which any judgment or decree can be rendered foreclosing any lien on any of Utility's property situated within**

the public right-of-way, (b) seeking to enjoin, restrain, or in any manner interfere with Utility in the performance or observance by it of any of the terms or conditions of this Franchise, or any regulation, notice or direction of County in such connection, (c) affecting the rights, powers or duties of Utility to do or not to do anything which by this Franchise it may be required to do or not to do, or (d) which involves or might involve the constitutionality, validity or enforcement of this Franchise. County may take such steps relating to the suit, action or proceeding, as County may deem necessary or advisable to protect the interest of County or the public interest.

15. Inspection; charge. County, if it deems necessary, may inspect any of Utility's activity and/or facilities in the public right-of-way to ensure proper performance of this Franchise and conformance with applicable federal, state and county laws, ordinances and regulations, and County may make a reasonable charge for such inspection, provided such charge is lawfully adopted and uniformly imposed and collected for such inspections from other utilities or persons similarly situated to Utility.
16. Compliance; assent to legality. Utility must conform to, abide by, and perform all the conditions, provisions, requirements, and limitations in this Franchise. Utility is subject to all County ordinances and regulations now in force or that hereafter may be lawfully adopted, including all ordinances and regulations relating to the use of public right-of-way by utilities.
17. Interpretation of Governing Law. The interpretation and performance of this Franchise and of the general terms and conditions herein will be in accordance with and governed by the laws of the State of Arizona.
18. Utility Has No Interest or Estate. Utility agrees that it has no claim, interest, or estate at any time in the right-of-way by virtue of this Franchise or its use hereunder. Upon termination or revocation of this Franchise, Utility will have no right of entry upon the right-of-way to perform work contemplated by this agreement unless permitted by the County's Department of Transportation in writing, however Utility may perform emergency work in accordance with County Zoning Code Chapter 10.44.030 as may be amended.
19. Assignment/ Transfer. Utility cannot assign or transfer any interest in the Franchise without the prior written consent of County. County will not unreasonably withhold its consent to a proposed transfer.
20. Notice. Notices required under this Franchise must be delivered or sent by certified mail, postage prepaid to:

Licensors:

Clerk of the Pima County Board of Supervisors
33 N. Stone
Suite 100
Tucson, AZ 85701

Utility:

Southwest Gas Corporation
Public Affairs Department
1600 E. Northern Avenue
Phoenix, Arizona 85020

With a copy to:
Southwest Gas Corporation
Legal Affairs Department
8360 S. Durango Drive
Las Vegas, Nevada 89193

The delivery or mailing of such notice is equivalent to direct personal notice and will be deemed to have been given at the time of delivery.

21. Conflict of Interest. This Agreement is subject to A.R.S. § 38-511 which provides for cancellation of contracts by County for certain conflicts of interest.
22. Limits on Utility's Recourse.
 - 22.1. Utility by accepting the Franchise acknowledges that it has not been induced to accept the same by any promise, verbal or written, by or on behalf of County or by any third person regarding any term or condition of the Franchise not expressed therein. Utility by its acceptance of the Franchise further pledges that no promise or inducement, oral or written, has been made to any employee or official of County regarding receipt of the Franchise.
 - 22.2. Utility, by its acceptance of the Franchise further acknowledges that it has carefully read the terms and conditions of the Franchise and accepts without reservation the obligations imposed by the terms and conditions herein.
23. Headings. Headings used in this Franchise are for convenience only and cannot be used in construing its terms.
24. Severability. If any section, provision, term or covenant or any portion of any section, provision, term or covenant of the Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination will have no effect on any remaining portion of such section, provision, term or covenant or the remaining sections, provisions, terms or covenants of the Franchise, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.
25. Waiver. Waiver by County of any breach of any term, covenant or condition herein contained will not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

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UTILITY:
SOUTHWEST GAS CORPORATION, a
California corporation

By: *BTH*

Title: Bradford T. Harris, Regional VP/Arizona

State of Arizona)

) ss

County of Pima)

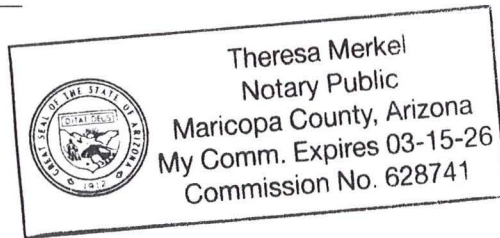
This instrument was acknowledged before me the undersigned authority on this 1 day of August, 2021 by Theresa Lambert, as notary of Maricopa County.

Theresa Lambert
Notary Public

Theresa Merkel

My commission expires:

3-15-26



IN WITNESS WHEREOF, the parties hereto have executed this Franchise as of the date signed by the Board of Supervisors.

LICENSOR: PIMA COUNTY

Chair, Board of Supervisors

Date: _____

Attest:

Melissa Manriquez, Clerk of the Board

Date: _____

APPROVED AS TO CONTENT:



Jeffrey Teplitsky, Director, Real Property Services

APPROVED AS TO FORM:

 08/19/2024

Rachelle Barr, Deputy County Attorney