



BOARD OF SUPERVISORS AGENDA ITEM REPORT CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: July 7, 2020

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Southwest Gas Corporation

***Project Title/Description:**

Renewable Natural Gas (RNG) Interconnection Construction Agreement

***Purpose:**

The Board of Supervisors previously funded a project to allow the Regional Wastewater Reclamation Department (RWRD) to produce & market RNG at RWRD's Tres Rios Water Reclamation Facility (WRF). This agreement details the construction of physical assets necessary for enabling Southwest Gas to receive RNG produced at the Tres Rios WRF into the Southwest Gas distribution system.

It further establishes the responsibilities of the two parties, an easement for Southwest Gas' physical connection to RWRD's system, & the rates associated for the use of the transmission of the gas from the Tres Rios WRF to the ultimate end user.

It is anticipated that there will be one additional agreement between the parties, an operating agreement, which will focus on the attributes of the RNG itself & on the process of its manufacture.

***Procurement Method:**

This Contract is a non-Procurement contract & not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

Southwest Gas & RWRD are partnering in a new venture to capture, refine & distribute renewable gas produced from the treatment of biosolids at the Tres Rios WRF. This Agreement defines the technical physical connections & criteria the parties will observe in order to safely distribute this gas.

***Public Benefit:**

This RNG will be marketed under the auspices of the Clean Air Act & the Environmental Protection Agency as a low carbon source of transportation fuel thus reducing greenhouse gases, air pollution, and lessening dependence on petroleum fossil fuels. The sale of RNG fuel and associated carbon credits provides a new revenue stream to RWRD, allowing the department to avoid or reduce increases in wastewater fees.

***Metrics Available to Measure Performance:**

RWRD will track the volume of RNG produced, Therms produced (measure of energy) and revenue generated by the sale of this gas & its environmental credit attributes.

***Retroactive:**

No.

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To: CoB- 6-30-20
ver. 1
pgs- 14 (1) Addendum

Contract / Award Information

Document Type: CT Department Code: WW Contract Number (i.e., 15-123): 20*463
Commencement Date: 12/1/20 Termination Date: 12/1/40 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount: \$* 1,760,000.00 ☐ Revenue Amount: \$ _____

*Funding Source(s) required: RWRD Operating Funds

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 or ☐ 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: Jeff Prevatt, Deputy Director

Department: Regional Wastewater Reclamation Department Telephone: 724-6060

Department Director Signature/Date: [Signature] for Jackson Jenkins / June 29, 2020

Deputy County Administrator Signature/Date: [Signature] 6/29/2020

County Administrator Signature/Date: [Signature] 6/29/20
(Required for Board Agenda/Addendum Items)



| | |
|---|---------------------|
| CONTRACT | |
| NO. | <u>CT-WW-20-443</u> |
| AMENDMENT NO. | _____ |
| This number must appear on all invoices, correspondence and documents pertaining to this contract. | |

36075

SOUTHWEST GAS CORPORATION
RNG INTERCONNECTION CONSTRUCTION AGREEMENT

This Renewable Natural Gas (RNG) INTERCONNECTION CONSTRUCTION AGREEMENT ("Agreement") is made and entered by and between SOUTHWEST GAS CORPORATION, a California corporation (the "Utility") and PIMA COUNTY, a body politic and corporate of the State of Arizona (the "Customer") (each referred to individually as a "Party" and collectively as the "Parties").

Utility's Arizona Gas Tariff, including but not limited to Schedule No. G-65 ("Tariff"), as authorized by and on file with the Arizona Corporation Commission ("ACC" or "Commission"), and as may be amended from time to time, shall apply to the transaction to be performed hereunder, and is hereby incorporated by reference into this Agreement. Nothing in this Agreement shall be construed in any manner as limiting or modifying the rights or obligations of either Party under Utility's Tariff. This Agreement, all terms and provisions contained or incorporated herein, and the respective obligations of the Parties hereunder are further subject to all valid laws, orders, rules, and regulations of duly constituted authorities having jurisdiction over the subject matter of this Agreement. The Parties agree that this Agreement, including subsequent amendments, is subject to Commission approval and its continuing jurisdiction.

In consideration of the mutual covenants and agreements as herein set forth, Utility and Customer agree as follows:

ARTICLE I - CONSTRUCTION OF FACILITIES

This Agreement governs the construction of the facilities for interconnection of Utility natural gas facilities and Customer facilities to develop a receipt point for renewable natural gas ("RNG") on Utility's natural gas system. The interconnection point shall be adjacent to the Customer's RNG delivery point and generally located as shown in Exhibit B hereto ("Interconnection Point").

Utility's proposed design for the facilities for interconnection of Utility natural gas facilities and Customer facilities calls for Customer to deliver RNG to Utility at the Interconnection Point within the Maximum Capacity and Delivery Pressure range provided in Exhibit A. Utility will design the facilities per terms and conditions of Southwest Gas G-65 tariff and consistent with Maximum Capacity and Delivery Pressure set forth on Exhibit A. The actual facilities installed may change due to field conditions, Customer request, or other factors. Collectively, the natural gas main, service lines, meter set assemblies, regulators, valves, fittings, gauges, and other appurtenant devices used to construct the facilities generally described above for interconnection of Utility natural gas facilities and Customer facilities are the "Incremental Natural Gas Facilities" that are the subject of this Agreement.

This Agreement shall serve as an Incremental Natural Gas Facilities construction agreement. Nothing in this Agreement shall prevent the Parties from entering into separate agreement(s), as necessary.

In consideration for Utility's design, construction, and operation of the Incremental Natural Gas Facilities, Customer agrees to pay Utility for all service rendered by Utility in accordance with a mutually agreeable rate structure negotiated by the Parties under Utility's approved Tariff Schedule G-65, along with all applicable rules, terms and conditions of the Tariff, and the terms and conditions of this Agreement. Payment under this Agreement is a term of service. Nothing in this Agreement shall be interpreted or construed to require the Utility to take or purchase any of Customer's RNG except upon such terms and conditions as are consistent with Utility's approved Tariff schedules and rules acceptable to Utility.

Should Customer request a different delivery pressure or a Maximum Capacity than what is specified in this Agreement or Exhibit(s), Utility may need to construct additional facilities under a separate agreement. Extension and construction of any additional facilities shall be made in accordance with Utility's Tariff in effect at the time of Customer's requested increase in pressure or Maximum Capacity. It is the responsibility of Customer to initiate said request to Utility.

ARTICLE II - TERM OF AGREEMENT

This Agreement shall become effective upon the date of execution by both Parties or approval by the Commission, whichever is later. The "Requested In-Service Date" is December 1, 2020. The "In-Service Date" shall be the first day of the first available full billing cycle following the Requested In-Service Date or the earliest date that Utility is prepared to initiate service, whichever occurs last.

This Agreement shall continue in effect for a primary term of twenty (20) years after the In-Service Date ("Primary Term"); and from year to year thereafter, subject, however, to termination at expiration of the Primary Term or upon the first day of any year thereafter by either Party providing at least twelve (12) months written notice to the other of termination of the Agreement. The period commencing on the In-Service Date and ending twelve (12) full billing cycles thereafter, and every succeeding period of twelve full billing cycles, shall be the "Contract Year."

ARTICLE III – SERVICES FEE

The Services Fee and associated surcharges for the services provided under this Agreement during the Primary Term and any subsequent extension are set forth in Exhibit A and are subject to adjustment per the terms of this Agreement and the Utility's Tariff. The Services Fee is a fixed monthly charge that will have a one-time adjustment to be effective beginning with the first billing in Year 2 of the Primary Term ("True-Up Date"). Within one year of the In-Service Date, Utility will determine the Final Construction Costs of the Incremental Natural Gas Facilities. The "Final Construction Costs" are the recorded costs of the Incremental Natural Gas Facilities, including installation, with any remaining estimated costs that have not been recorded as of the True-Up Date. For the purpose of this Agreement, the "Estimated Construction Costs" are the Utility's estimated costs for the Incremental Natural Gas Facilities, including installation, to provide the

construction service under this Agreement. Beginning with the first billing in Year 2, the Services Fee for each time period, excluding Year 1, shall be adjusted by multiplying the Services Fee by the Final Construction Costs and then dividing by the Estimated Construction Costs.

The Customer agrees to pay the Utility for all services rendered and materials and equipment ordered in reliance upon and under the terms of this Agreement in accordance with the Utility's Tariff. In the event the Parties are unable to resolve a billing dispute, the Parties agree that they will adhere to the billing dispute protocol set forth in the Tariff prior to seeking any other remedy.

ARTICLE IV - OTHER OPERATING PROVISIONS

A. INSTALLATION AND COMPLETION OF FACILITIES

Utility shall install, own, operate, and maintain all Incremental Natural Gas Facilities constructed and installed pursuant to this Agreement. The Incremental Natural Gas Facilities will be properly designed and sized by Utility to receive the RNG produced by Customer at no greater than the Maximum Capacity and within the Delivery Pressure range specified in Exhibit A, hereto.

Customer hereby agrees to grant Utility such easements, together with all rights of ingress and egress as may be necessary, to enable Utility to install, operate, inspect, maintain, repair, replace, abandon, and/or remove the Incremental Natural Gas Facilities which Utility may elect to install as described in Article I, in whole or in part, or to complete a survey of the number and type of natural gas equipment installed by Customer (collectively "Easement Rights"). These Easement Rights shall run with the land and be binding upon all successors and assigns. With the exception of the enclosed easement area identified in Exhibit B as the monitoring and odorization area, all Easement Rights will be non-exclusive; subject to the condition that no other grants or permission, may interfere with Utility's facilities or the exercise of Utility's rights and privileges under this Agreement or Tariff; and further subject to the requirement that all Utility-specified clearances be maintained and all rules, regulations, and statutes governing the protection of underground facilities and structures be strictly observed. All Utility required clearances for underground pipe and facilities for the Incremental Natural Gas Facilities shall be maintained at all times. These clearances shall be no less than two feet vertically and horizontally from the face, *i.e.*, outside diameter, of pipe to any other structure, pipe or utility. In addition, if steel pipe or steel facilities cross or run adjacent to the interconnect pipe, then Customer must work with Utility to mitigate any identified cathodic protection ("CP") issues or future required clearances to resolve such CP issues. If the Utility required clearances change for any reason during the term of this Agreement, the Parties shall meet and confer within ten business days of Utility providing notice of such change to determine how such clearances or CP mitigation measures will be implemented. All Easement rights granted by Customer to Utility in conjunction with this Agreement terminate with termination of this Agreement, but in no event shall Easement Rights terminate before Utility abandons, and/or removes the Incremental Natural Gas Facilities.

Customer agrees that no buildings, structures, fences, or trees shall be placed upon, over or under the Incremental Natural Gas Facilities, except for street, road, or driveway purposes. Customer agrees Customer shall not harm, damage, or endanger the Incremental Natural Gas Facilities nor

unduly hinder or obstruct access to those facilities provided, however, Customer may use its property for any uses not inconsistent with the purposes of the Easement Rights. In no event shall these permissive uses of the easement and access areas for the Incremental Natural Gas Facilities result in any long-term or permanent parking or storage of vehicles, equipment, materials, parts, or inventory within the easement areas. Following reasonable notice to Customer and Customer's failure to timely respond, Utility shall have the right, at Customer's expense, to take whatever actions are necessary to remove or eliminate any hazard, obstruction, or impediment for the protection of the Incremental Natural Gas Facilities. Customer agrees to pay for all direct damage, if any, sustained to the Incremental Natural Gas Facilities as a result of the negligent or intentional acts of Customer and/or its agents and/or contractors. The Parties agree that the loss of any natural gas commodity or the costs of service restoration required as a result of any damage to the Incremental Natural Gas Facilities resulting from Customer's and/or its agents' and/or contractors' negligent or intentional acts shall be deemed direct damages. Customer further agrees to not interfere with Utility's exercise of the rights herein granted.

Utility will construct the Incremental Natural Gas Facilities in a manner consistent with good engineering and construction practice and will comply with all applicable safety standards and regulations while working on Customer's property.

Utility may employ contractors to construct facilities and doing so does not impose third party beneficiary status upon Customer. Utility may in its sole discretion, elect to bid the work to contractors or to engage in other arrangements, such as a sole source. If Customer does not object before such work commences, Customer agrees to waive any claim to the reasonableness of the process employed by Utility to assign the work. The Parties acknowledge and agree that Utility will install all Utility facilities on property owned by Customer.

Subject to Utility's inspection, stand-by, and supervision, Customer will excavate and backfill the trench connecting Utility's RNG monitoring and odorization equipment and facilities with the Utility's stub-out located adjacent to Ina Road, all in accordance with Utility's specifications and requirements. Utility will install all necessary underground Incremental Natural Gas Facilities in the trench.

Utility agrees to work with due care in the exercise of its rights on the property and to restore Customer's property to a condition that is reasonably similar to that which existed before the work was performed, and to pay for all direct damage, if any, sustained to Customer's property as a result of the negligence of Utility and/or its agents and/or contractors related to the installation of the Incremental Natural Gas Facilities.

Utility makes no representations, warranties, or promises, either express or implied, with respect to the completion date for construction of the Incremental Natural Gas Facilities. Utility acknowledges Customer's Requested In-Service Date listed in Article II and will use commercially reasonable efforts to complete the Incremental Natural Gas Facilities by that date. However, Customer acknowledges that Commission and other approvals of this Agreement may impact the completion date for construction of the Incremental Natural Gas Facilities. Utility, in its sole discretion, may postpone or defer construction of some or all of the Incremental Natural Gas Facilities or utilize other natural gas facilities to provide the requested service. Utility will provide

reasonable notice to Customer and a written explanation of the reasons for any postponement or deferral of construction.

B. LIMIT OF LIABILITY

Neither Utility, nor its affiliates, subcontractors, agents and/or employees shall be liable for any special, incidental, indirect, exemplary, consequential, or any other damages, including, without limitation, loss of product, loss of profit or revenue, loss of use, costs of replacement power or supply, or delivery obligations as a result of any delay in completing construction of the Incremental Natural Gas Facilities by the Requested In-Service Date or for subsequent interruptions in service, even if Utility has been advised of the possibility of such damages.

C. RECOVERY OF COSTS

Customer acknowledges that, between the effective date of this Agreement and the In-Service Date, Utility shall incur certain costs and expenses in furtherance of construction of the Incremental Natural Gas Facilities, including, but not limited to, permitting, engineering design, surveying, and materials procurement. In the event: (i) Customer notifies Utility that Customer does not intend to complete its planned facilities and operations; (ii) Utility has reasonably determined that progress has materially halted for a period of thirty (30) continuous calendar days, for whatever reason(s), and Customer has not provided adequate assurances that progress will resume within sixty (60) calendar days; or (iii) Utility terminates this Agreement due to a material breach by Customer of this Agreement or Utility's Tariff, prior to the In-Service Date, Utility shall determine the total costs owed by Customer for any costs incurred by Utility as of such date, and then Customer shall reimburse Utility for all such costs and expenses incurred and accrued by Utility through the termination date and this Agreement shall be deemed terminated. Failure to reimburse Utility constitutes a breach of this Agreement, and Utility has no further Utility obligation or Utility liability after the termination date.

It is expressly understood and agreed by Customer that the obligation to reimburse Utility for the costs associated with the Incremental Natural Gas Facilities shall survive the termination of this Agreement by either Party for any reason. Customer also agrees that, in all events, Utility will retain ownership of the Incremental Natural Gas Facilities free and clear of any lien or claim by Customer.

D. CONFIDENTIALITY

If either Party reasonably believes that some of the records submitted to the other Party contains proprietary, trade-secret, critical infrastructure information as defined in A.R.S. § 41-1801, as amended ("Critical Infrastructure Information"), or is otherwise deemed confidential information, the Party disclosing the confidential information must prominently mark those records "CONFIDENTIAL" or "CRITICAL INFRASTRUCTURE INFORMATION – DO NOT MAKE PUBLIC; PUBLIC DISCLOSURE NOT AUTHORIZED BY LAW AND MAY BE SUBJECT TO CRIMINAL SANCTION UNDER A.R.S. § 41-1805, AS AMENDED", as appropriate. In the event a public-records request is submitted to Customer for records marked CONFIDENTIAL or CRITICAL INFRASTRUCTURE INFORMATION by Utility, Customer will notify Utility of the

request as soon as reasonably possible. Except for those documents clearly identified as Critical Infrastructure Information, Customer will release the records ten (10) business days after the date of that notice, unless Utility has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. Customer will not, under any circumstances, be responsible for securing such an order, nor will Customer be in any way financially responsible for any costs associated with securing such an order.

E. INSURANCE

Utility will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations for constructing the Incremental Natural Gas Facilities under this Agreement have been met. Except for this section E, all other provisions of this Agreement shall remain in full force and effect for the term of the Agreement. The below Insurance Requirements are minimum requirements for this Agreement and in no way limit either Party's indemnity obligations under this Agreement. The County in no way warrants that the required insurance is sufficient to protect the other Party for liabilities that may arise from or relate to this Agreement.

1. Insurance Coverages and Limits:

a. Minimum Scope and Limits of Insurance: Utility shall procure and maintain, until all of its obligations have been discharged, coverage with limits of liability not less than those stated below.

i. Commercial General Liability (CGL) – with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include coverage for liability arising from premises, operations, independent contractors, personal injury, bodily injury, broad form contractual liability and products-completed operations. Any standard coverages excluded from the CGL policy, such as products/completed operations, etc. shall be covered by endorsement or separate policy and documented on the Certificates of Insurance.

ii. Business Automobile Liability – Coverage for bodily injury and property damage on any owned, leased, hired, and/or non-owned autos assigned to or used in the performance of this Contract with minimum limits not less than \$1,000,000 Each Accident.

iii. Workers' Compensation and Employers' Liability – Statutory coverage for Workers' Compensation. Workers' Compensation statutory coverage is compulsory for employers of one or more employees. Employers Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each employee – disease.

2. Additional Insurance Requirements:

In the event that Utility decides to obtain insurance policies in lieu of self-insured retention, the policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- a. Claims Made Coverage: If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Agreement, and Utility must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- b. Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Utility.
- c. Subrogation Endorsement: The General Liability, Business Automobile Liability, and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of the other Party, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Utility.
- d. Primary Insurance Endorsement: 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, employees or Pima County shall be excess and not contributory insurance.
- e. The Required Insurance policies may not obligate the County to pay any portion of a Utility's deductible or Self Insurance Retention (SIR). Insurance provided by the Utility shall not limit the Utility's liability assumed under the indemnification provisions of this Agreement.
- f. Insurer Financial Ratings: Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A-VII, unless otherwise approved by the County.
- g. Subcontractors: Utility must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Utility must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Utility must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

3. Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Agreement, the Utility must provide to Pima County, within two (2) business days of receipt of notice, if a policy is suspended,

voided, or cancelled for any reason. Such notice shall be mailed, emailed, hand-delivered, or sent by facsimile transmission to the Pima County Contracting Representative. Notice shall include the Pima County project or contract number and project description.

4. Verification of Coverage:

In the event that Utility decides to obtain insurance policies in lieu of self-insured retention:

- a. Utility shall furnish Pima County with certificates of insurance (valid ACORD form or equivalent approved by Pima County) as required by this Agreement. An authorized representative of the insurer shall sign the certificates.
- b. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Agreement must be in effect 10 days prior to work under this Agreement. Failure to maintain the insurance coverages or policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.
- c. All certificates required by this Agreement shall be sent to the contracting representative listed for notices in Article VI of this Agreement. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Agreement at any time.
- d. Certificates must specify that the appropriate policies are endorsed to include subrogation waiver endorsements for the other Party and its departments, officials, and employees. Note: For larger projects, each Party must provide actual copies of the additional insured and subrogation endorsements.

5. Self-Insurance:

Notwithstanding anything to the contrary set forth herein, Utility shall have the right to self-insure as to the coverages set forth above; provided, however, that Utility provides a self-insured letter which confirms each of the required. Utility's self-insured letter is subject to Customer's approval which will not be unreasonably withheld.

ARTICLE V – SITE SECURITY

Utility is responsible for the security of its Incremental Natural Gas Facilities located on Customer's property. Utility will be provided with a dedicated gate allowing entrance to Utility's RNG monitoring and odorization equipment and facilities. Utility's personnel will have access only to those portions of Customer's property over which Utility has been granted an Easement Right, together with associated rights for ingress and egress to Customer's property as necessary to access the Easement Right area. Where those Easement Rights lie within Customer's secure facility, Utility must, except in an emergency situation and for routine inspection and maintenance not requiring

excavation, seek permission to enter by providing Notice consistent with the terms of the Arizona Gas Tariff.

ARTICLE VI - NOTICES

Unless herein provided to the contrary, any notice called for in this Agreement shall be in writing and shall be considered as having been given if hand-delivered or sent by certified mail, overnight courier or equivalent, with all postage and charges prepaid. Unless changed, the addresses of the Parties are as follows:

SOUTHWEST GAS CORPORATION

Attn: Key Account Management LVB-106
5241 Spring Mountain Rd.
Las Vegas, NV 89150
Ph. No. 702-364-3236
Fax No. 702-365-5904
Email: KeyAccountManagement@swgas.com

PIMA COUNTY

Attn: Director, RWRD
201 N. Stone, 8th Floor
Tucson AZ 85701
Ph. No. 520-724-6500
Fax No.
Email:

Either Party may change its address at any time upon written notice to the other.

ARTICLE VII - REGULATORY REQUIREMENTS

Customer shall not knowingly take any action which would subject Utility to the jurisdiction of the Federal Energy Regulatory Commission, the Department of Energy, or any successor governmental agency. If such jurisdiction could occur due to this Agreement or the actions of Customer, Utility has the right to terminate the Agreement subject to the good faith negotiations described in this Article VII.

Should the Federal Energy Regulatory Commission, the ACC or any other regulatory or successor governmental agency having jurisdiction, impose by rule, order, or regulation any terms or conditions upon this Agreement which are not satisfactory to either Party, then the dissatisfied Party, upon the issuance of such rule, order, or regulation, and by written notification to the other Party, may terminate this Agreement upon the effective date of such rule, order, or regulation. Notwithstanding this right to terminate, in the event either Party becomes aware of governmental action, or the threat of governmental action, which could trigger rights under this Article VII, such Party shall notify the other of the action or threatened action and the Parties thereafter shall engage in good faith efforts, for a period not to exceed sixty (60) days, unless extended by mutual agreement of the Parties, to negotiate additional terms to address the circumstances that are the subject of the rule, order, or regulation prior to exercising any termination rights under this Agreement.

ARTICLE VIII - SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. No assignment or transfer by either Party of its rights hereunder shall be made without prior written approval of the other Party provided, however, that such approval is not required for: an ACC-approved Utility merger, sale, acquisition, or corporate

restructuring; or a Customer transfer of assets to another governmental entity. Such approval shall not be unreasonably withheld. As between the Parties hereto, such assignment shall become effective on the first day of the month following the later of the non-assigning Party's written consent to such assignment or the effective date of such assignment. The assigning Party agrees to provide the non-assigning Party at least thirty (30) days' written notice of any assignment or transfer of this Agreement. Customer agrees to provide Utility at least thirty (30) days' written notice of any transfer of ownership of Customer's site, and any change of entity or person who receives gas service at Customer's site.

ARTICLE IX – RELATIONSHIP OF THE PARTIES

Nothing in this Agreement shall be construed to create any partnership, joint venture, employment relationship, franchise, or agency as between the Parties. The relationship of the Parties hereunder shall be that of independent parties. Neither Party is intended to have, nor shall either represent to any other person that it has any power, right, or authority to bind the other Party, or to assume or create any obligation or responsibility, express or implied, on behalf of the other Party, except as expressly required or authorized by this Agreement.

Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to the Agreement and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to the Agreement, nor shall any provision give any third person the right of subrogation or action over any Party to the Agreement.

ARTICLE X – AUTHORITY TO EXECUTE; MODIFICATIONS

Each Party represents and warrants that the person executing the Agreement on its behalf has the right, power, and authority to bind the Party to the respective terms and conditions of this Agreement. Modifications or changes to this Agreement must be in writing and signed by authorized representatives of both Parties.

ARTICLE XI - SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such manner so as to be effective and valid under applicable law. If any provision of this Agreement shall be deemed to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity. Such prohibition or invalidity shall not invalidate the remainder of the provision or the other provisions of this Agreement.

ARTICLE XII – CUMULATIVE RIGHTS; NO WAIVER OF RIGHTS; NO PRECEDENCE OR COURSE OF DEALING

Each and every right granted to a Party or allowed by law or equity shall be cumulative and not exclusive. No failure to exercise, or a delay in exercising any right, will operate as a waiver thereof, nor will any single or partial excuse of any right by a Party preclude any other or

future exercise thereof or the exercise of any other right. Nothing in this Agreement is intended or should be construed to set precedent; act as a waiver of any rights; or determine any future course of dealings (including negotiations) between Utility and Customer. Nothing in this Agreement addresses, changes or modifies any other past or current agreement, contract or business practices/dealings between the Parties.

ARTICLE XIII – GOVERNING LAW

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Arizona, without consideration of its choice of law provisions. Any action relating to this Agreement will be brought in a state court in Pima County.

ARTICLE XIV – INDEMNIFICATION

Consistent with Arizona Revised Statute Section 12-820, *et. seq.*, each party (as Indemnitor) agrees to indemnify, defend, and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") for bodily injury of any person (including death) or property damage, but only to the extent and in proportion that such injury or damage is determined by a court of competent jurisdiction, or by settlement, to have been caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.

ARTICLE XV – MISCELLANEOUS

A. NONDISCRIMINATION

The parties will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties under this Agreement. The parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Agreement by reference.

B. CONFLICT OF INTEREST

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

C. NON-APPROPRIATION

Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such cancellation, the Parties will have no further obligations under this Agreement other than for payment for services rendered and for materials and equipment ordered or acquired by Utility prior to cancellation. If, and only if, the full appropriation is not authorized by the Pima County Board of Supervisors and the County

exercises its rights under this Non-appropriation provision, and not for any other reason, to terminate the Agreement, all materials and equipment paid for by County become County property.

D. ISRAEL BOYCOTT CERTIFICATION

Utility hereby certifies that it is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Utility may result in action by the Customer up to and including termination of this Agreement.

E. LEGAL ARIZONA WORKERS ACT

1. Compliance with Immigration Laws. Utility hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Utility will further ensure that each subcontractor who performs any work for Utility under this Agreement likewise complies with the State and Federal Immigration Laws.

2. Books & Records. County has the right upon reasonable notice of not less than ten (10) business days to inspect the books and records of Utility and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

3. Remedies for Breach of Warranty. Any breach of Utility's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting Utility to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Utility will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Utility.

4. Subcontractors. Utility will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

ARTICLE XVI – HEADINGS; ENTIRE AGREEMENT

The headings appearing at the commencement of each article of this Agreement are descriptive only and for convenience, and shall not define, limit, or describe the scope or intent of this Agreement, nor in any way affect this Agreement. Except for related agreement(s) required for Utility to accept RNG produced by Customer into the Utility distribution system, this Agreement, inclusive of Exhibits, constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement. The Agreement supersedes all prior agreements and understandings, oral or written, between the Parties, regarding the subject matter of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

The signatures of the duly authorized representatives of the Parties below represent the mutual acceptance of this Agreement.


| | |
|--|---|
| <u>SOUTHWEST GAS CORPORATION</u> "Utility" | <u>PIMA COUNTY</u> |
| By: <u></u> Jose Esparza Jr (May 20, 2020 16:02 PDT) | _____ Chairman, Board of Supervisors |
| Name: Jose L. Esparza Jr Title: Senior Vice President, Information Services/Customer Engagement | ATTEST: _____ Clerk, Board of Supervisors |
| Date: <u>May 20, 2020</u> | Date: _____ |
| <u>KAL</u> KAL | APPROVED AS TO CONTENT <u></u> for Jackson Jenkins Director, RWRD |
| | APPROVED AS TO FORM <u></u> Deputy County Attorney |
| | Date: <u>5-20-20</u> |

EXHIBIT A – TO RNG INTERCONNECTION CONSTRUCTION AGREEMENT

36075

**SOUTHWEST GAS CORPORATION
STATEMENT OF EFFECTIVE RATES
SCHEDULE NO. G-65**

CURRENT EFFECTIVE RATESAmountServices Fee¹:

Years 1 – 10 - Fixed Charge/Month

\$ 5,700.00

Years 11 – 20 – Fixed Charge/Month

\$ 3,250.00

Off-System Delivery Charge (per therm)²

\$ TBD

Other Charges³:Department of Transportation⁴

\$ Per Tariff

| Account No. | Delivery Pressure (psig) | Maximum Capacity (cfh) |
|-------------|--|------------------------|
| TBD | No less than 450 psig and no greater than 720 psig | 39,000 |

Date Issued: May 20, 2020 (Original)

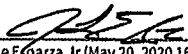

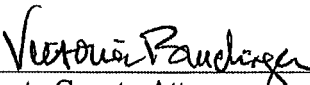
Customer: PIMA COUNTY

¹ Subject to the one-time adjustment provision of Article III.

² The applicability of the Off-System Delivery Charge and its rate are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC). It is likely that the initial charge will be as approved by FERC. The Utility may choose to replace this FERC rate with one approved by the Arizona Corporation Commission by filing an application with the FERC.

³ The Customer will also be responsible for any other charges that the Arizona Corporation Commission may mandate.

⁴ The Department of Transportation Charge is subject to change as approved by the Arizona Corporation Commission.

| <u>SOUTHWEST GAS CORPORATION</u> "Utility" | <u>PIMA COUNTY</u> |
|--|---|
| By: <u></u> Jose Esparza Jr (May 20, 2020 16:02 PDT) | _____ Chairman, Board of Supervisors |
| Name: Jose L. Esparza Jr Title: Senior Vice President, Information Services/Customer Engagement | ATTEST: _____ Clerk, Board of Supervisors |
| Date: <u>May 20, 2020</u> | Date: _____ |
| <u>KAL</u> KAL | APPROVED AS TO CONTENT <u></u> for Jackson Jenkins Director, RWRD |
| | APPROVED AS TO FORM <u></u> Deputy County Attorney |
| | Date: <u>5-21-20</u> |



**SOUTHWEST GAS CORPORATION
INTERCONNECTION POINT
RNG INTERCONNECTION CONSTRUCTION AGREEMENT**

