

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO UNS GAS, INC. AN ARIZONA CORPORATION, ITS SUCCESSORS, LESSEES AND ASSIGNS, CERTAIN POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN IN TOWN OF CHINO VALLEY, STATE OF ARIZONA, AS NOW OR HEREAFTER CONSTITUTED, A TRANSMISSION AND DISTRIBUTION SYSTEM OF GAS MAINS, PIPELINES AND RELATED APPURTENANCES FOR THE TRANSPORTING, SALE AND DISTRIBUTION OF GAS INTO, OUT OF, AND THROUGH SAID TOWN, AND FOR THE DISTRIBUTION AND SALE OF SUCH GAS TO SAID TOWN, ITS INHABITANTS AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND, AND OUTSIDE OF THE LIMITS OF SAID TOWN; AND TO USE THE STREETS, AVENUES, EASEMENTS, RIGHTS-OF-WAY, ALLEYS, HIGHWAYS, SIDEWALKS, AND BRIDGES IN SAID TOWN FOR SUCH PURPOSE FOR A PERIOD OF TWENTY-FIVE (25) YEARS; AND PRESCRIBING IN CONNECTION THEREWITH CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED; AND PROVIDING FOR THE PAYMENT TO SAID TOWN OF A PERCENTAGE OF CERTAIN REVENUES OF GRANTEE FROM ITS OPERATIONS THEREIN

BE IT ORDAINED by the governing body of the Town of Chino Valley, as follows:

Section 1. Grant of Franchise. That the Town of Chino Valley, a municipal corporation in Yavapai County, Arizona, herein called "Town", hereby grants to and vests in UNS Gas, Inc., an Arizona corporation, duly authorized to transact within this State a public service business as a natural gas utility, herein called "Company", a franchise ("Franchise") with the authority, license, power and privilege to maintain, construct, build, equip, conduct or otherwise establish and operate in said Town, as now or hereafter constituted, a transmission and distribution system of gas mains, pipelines, and related appurtenances in compliance with a permit issued pursuant to Paragraph 3.1, to use, sell, distribute, and convey or otherwise establish, conduct, serve, supply or furnish the inhabitants of said Town and others, and to the Town gas for light, fuel, power, heat and any and all other useful purposes, and Company hereby is granted passage, right-of-way and the right to occupy and use during the life of this Franchise in any lawful way, both above and beneath the surface of the same, every and any and all Town streets, avenues, alleys, highways, sidewalks, bridges and other dedicated public rights-of-way, now existing or may be hereinafter extended (collectively referred to as "Rights-of-Way") for every and any such service, use, effect and lawful purpose as herein mentioned.

Section 2. Construction and Relocation of Facilities.

2.1 Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, provided the same do not conflict, in the reasonable opinion of Town, (i) with water or other pipes, sewers (including storm sewers and publicly-owned drainage facilities of all kinds), or any other underground installations of Town, or (ii) with underground installations of others existing at the time of the proposed installation of facilities by Company. All work done in the Rights-of-Way shall be done with the utmost diligence and the least practical inconvenience to the public or individuals, and that Company shall, subject to the reasonable approval of Town and within a reasonable time, restore any disturbed public or private property or other premises excavated by it to their original condition as nearly as practicable, subject to the reasonable approval of Town. Town agrees that this requirement shall be deemed met if the disturbed property is restored with comparable materials, so that the restoration meets or exceeds industry and Town standards.

2.2 Company shall remove or relocate its facilities as and when required by Town to accommodate a public purpose; said removal or relocation shall be made at the sole cost and expense of Company, unless

(1) Company can demonstrate that its facilities were lawfully installed prior to the dedication to or acquisition by Town of the property in question in which case the cost and expense shall be the responsibility of Town, or (2) the Town fails to commence the public purpose within three years of such relocation, in which case the cost and expense shall be the responsibility of the Town

2.3 Town will not exercise its right to require utility facilities to be relocated in an unreasonable or arbitrary manner and will reasonably cooperate with Company on the location and relocation of Company's and other facilities in the public right-of-way. Completed or "as-built" plans of any facilities installed or relocated by Company shall be submitted by Company to Town as may be required by Town's Public Works Director. All work performed by Company and/or its agents shall be in compliance with applicable Town codes, federal and state laws, policies and procedures of Town and other applicable regulations.

2.4 If Town pays all or part of the cost of relocating Company's facilities pursuant to this Franchise, the cost to Town shall be limited to those costs and expenditures reasonably incurred for relocating such facilities in accordance with federal, state and Town laws, rules, ordinances and regulations and with established practices of Municipality, and, where not in conflict therewith, applicable industry standards. Costs to Town for relocation of Company's facilities shall not include any upgrade or improvement of Company's facilities as they existed prior to relocation. Prior to payment by Town, Company shall provide an itemization of such costs and expenditures subject to Town's review and approval. Such itemization shall be submitted to Town within ninety (90) days of completion of the relocation.

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

2.6 Where Town's facilities or other facilities occupying a Right-of-Way under authority of a Town permit or license are already located in the Right-of-Way and a conflict between Company's potential facilities and the existing facilities can only be resolved expeditiously as determined by the Director of Public Works of Municipality by relocating the existing Town or Company's facilities, Company shall bear the entire cost (including the cost of purchasing new easements or Right-of-Way, in necessary) of relocating the existing facilities, irrespective of the function they served.

Section 3. Permits.

3.1 Prior to commencing any work in a Right-of-Way (except in emergency circumstances), Company shall obtain any permit necessary for such work but in consideration of the payments made under Section 8 below, Company shall not be required to pay any permit fees to Town for any such work. In the event of an emergency, Company shall notify Town prior to such repairs, to the extent practicable, and shall obtain the necessary permits in a reasonable time after notification, showing the work performed in the Right-of-Way, at Town's cost. Company, upon receipt from Town of any one-hundred percent (100%) detailed finalized plans that would require construction or relocation of Company facilities, shall advise Town on the estimated amount of work required and the anticipated necessary timeframe of such work within ninety (90) days of receipt of such plans. For purposes of budgeting and asset allocation by

Company, Company shall have six (6) months from the receipt of such finalized plans in which to design and to commence construction or relocation of the necessary facilities.

3.2 Representatives of Town and Company shall, during the entire term of this Franchise, meet at least once in each calendar year to review any projects involving the construction or modification of Town Right-of-Way within the subsequent five-year period in order for both parties to adequately plan and budget for such actions and to determine the extent of work required of Company, if any, for such projects.

Section 4. Indemnification. Company shall indemnify and hold harmless Town, its officers, boards, commissions, employees, agents and independent contractors, against and from all claims, demands, causes of action, suits or proceedings regardless of the merits of the same, damages include damages to Town property, liability, costs and expenses of every type, arising from injury to any person or property caused by the acts or omissions of Company, its officers, agents, employees, servants and/or independent contractors, while exercising any of the rights, privileges, powers granted herein except where such damages or injury were caused by Town's gross negligence or willful misconduct. More particularly, Company does hereby agree to indemnify and hold harmless Town from any and all liability, claim, demand or judgment arising out of any injury to any person or property because of Company's construction, repair, extension, maintenance or operation of its equipment or any other acts or omissions of Company in the Right-of-Way in connection with this Franchise. Town shall promptly notify Company of any claim or cause of action which may be asserted against Town relating to or covering any matter against which Company has agreed, as set forth above, to indemnify defend and hold harmless Town. Company reserves the right, but not the obligation, to employ such attorneys, expert witnesses, and consultants as it deems necessary to defend against the claim or cause of action. Company further reserves the right to take total or partial control of such defense. In the event that Town is in control, either totally or partially of such defense, Company shall pay all expenses incurred by Town in providing the defense.

Section 5. Insurance. Company agrees that at all times during the existence of this Franchise, it will maintain in force, at its own expense, a general liability insurance policy in a policy amount not less than Five Million Dollars (\$5,000,000.00) to adequately insure and/or protect the legal liability of Company with respect to the installation, operation, and maintenance of its facilities, together with all the necessary and desirable appurtenances authorized by this Franchise, to occupy the public property or other premises of Town. Such insurance program will provide protection for bodily injury and property damage arising from the operation by Company of its facilities. Company will provide Town documentation of such liability insurance program within fifteen (15) calendar days following the request of Town. The policy limits or any insurance maintained in compliance with this section shall not limit Company's indemnification requirements under Section 4 of this Franchise.

Section 6. Utility Rates and Charges. The rates and charges to be charged by Company for furnishing gas service hereunder and the rules and regulations to be made and enforced by Company for the conduct of its business shall be those from time to time on file and in effect with the Arizona Corporation Commission applicable to such service.

Section 7. Assignment. Company shall have the right and privilege of assigning this Franchise and all rights and privileges granted herein, with the prior written consent of Town, which consent shall not be unreasonably withheld so long as the assignee assumes the obligations of this Franchise. Whenever the word "Company" appears herein, it shall be construed as applying to its successors, lessees and assigns.

Section 8. Franchise Fees.

8.1 Company, its successors, lessees, and assigns for and in consideration of the grant of this Franchise shall pay to Town a sum equal to two percent (2%) of all revenues of Company, including regulatory assessments but excluding transaction privilege taxes and similar governmental impositions, from the retail sales and/or delivery by it and other charges for services attendant to the retail sale and/or delivery of natural gas delivered through Company's distribution system within the present and any future corporate limits of Town, as shown by Company's billing records. Except as otherwise provided in Section 8.2, said payments shall be in lieu of any and all fees, charges or exactions of any kind otherwise assessed by Town in any way associated with Company's use of the rights-of-way, including, but not limited to, the construction of Company's facilities hereunder or for permits or inspections thereof during the term of this Franchise. Beginning on the Effective Date of this Franchise as set forth herein, payment as described herein shall be payable in semi-annually on or before the last day of January and July in each such year while this Franchise shall remain in full force and effect.

8.2 Notwithstanding any provision contained herein to the contrary, Company shall pay, in addition to the payment provided herein, the following charges, taxes and fees as may be established in a code or ordinance properly adopted by Town: (a) general ad valorem property taxes; (b) transaction privilege and use tax as authorized by law and collected by Company for its retail sales to its customers within the present and any future corporate limits of Town; (c) pavement cut fees; and (d) other charges, taxes or fees generally levied upon businesses by Town, provided said charge, tax or fee is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within Town.

8.3 If any lawful authority having jurisdiction in Town hereafter prohibits said payment, the obligation to make such payments hereinabove provided for shall forthwith cease.

8.4 If during the term of this Franchise Company enters into any gas franchise with any other municipality in Arizona during the term of this Franchise that provides for a higher percentage of Company's revenues than two percent (2%) or includes more categories of revenues than set forth in this Franchise, Company shall notify Town Council of such higher percentage or expanded revenue base. Under such circumstances, Town Council, at its sole discretion, shall have the option to, as applicable: (i) increase Company's Franchise fee to the higher percentage rate; or (ii) include other revenue categories set forth in the franchise agreement Company has with the other entity of this State. Following Town Council's action, Company agrees to henceforth pay to Town a new Franchise fee at the higher Franchise percentage or to include the additional revenue categories.

8.5 For the purpose of verifying amounts payable hereunder, the books and records of the Company shall be subject to inspection by duly authorized officers or representatives of the Municipality at reasonable times.

Section 9. Severability. If any section, paragraph, subdivision, clause, phrase or provision hereof shall be adjudged invalid or unconstitutional, the same shall not affect the validity hereof as a whole, or any part or provision other than the part so decided to be invalid or unconstitutional.

Section 10. Term. This Franchise shall continue in full force and effect for a period of twenty-five (25) years from March 19, 2022 (the "Effective Date"); however, Town may terminate this Franchise in the

event Town shall have formally found, after notice and hearing, Company has failed to comply with any material provisions of this Franchise or has failed to correct any failure after thirty (30) days' written notice.

Section 11. Ownership. All plant, system, pipelines, works, and all other physical property installed or operated by Company in accordance with the terms of this Franchise shall be and remain the property of Company, and upon expiration of this Franchise or any extension or renewal thereof, Company is hereby granted the right to enter upon the public property or other public premises of said Town for the purpose of removing any and all such plant, system, pipeline, works and other property of Company, at any time within six (6) months after termination of this Franchise or any such extension or renewal thereof. All underground abandoned lines shall continue to remain the property of Company, unless Company specifically acknowledges otherwise to Town Manager and such is accepted by Town. Company shall remove, at Company's sole cost, abandoned lines at the request of Town when the lines are in physical conflict with Town's facilities, in the opinion of Town Engineer.

Section 12. Effective Date. Notwithstanding the formal Effective Date set forth in Section 10, the Franchise shall only become fully effective after its approval by a majority vote of the qualified electors of Town at the general election to be held on November 3, 2020, called by Town Council for that purpose. Company shall reimburse all of Town's expenses incurred in conducting the Franchise election (including Town's legal fees related to this Franchise; cost for publication of the proposed Franchise Agreement in the Prescott Courier per A.R.S. 9-502(C) and 39-203; and any expenses charged to Town for conducting the election through the County of Yavapai). If more than one item is on the same ballot, Company shall pay only that prorated portion of Town's election expenses determined by dividing all of Town's expenses for the election by the total number of measures presented on the ballot plus one if there is a general election for Town mayor and/or councilmembers.

Section 13. Default. Failure or unreasonable delay by any Party to perform any term or provision of this Franchise for a period of ten (10) days after written notice thereof from another Party shall constitute a default under this Franchise. 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.

Section 14. 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 below, 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 Town: Town Manager
 Town of Chino Valley
 202 N. State Route 89
 Chino Valley, Arizona 86323

To Company: Unisource Energy Services
 UNS Gas, Inc.
 Attn: District Manager

P.O. Box 80078
Prescott, AZ 86304

PASSED, ADOPTED AND APPROVED by the Mayor and Council of Town of Chino Valley, Arizona, on this _____ day of _____, 2020.

APPROVED:

The Honorable Darryl Croft, Mayor
Town of Chino Valley, Arizona

ATTEST:

Ms. Jami Lewis, Clerk

APPROVED AS TO FORM:

Andrew McGuire
Gust Rosenfeld PLC, Town Attorneys

ACCEPTED WITHOUT CHANGE:

UNS Gas, Inc.
By: Cynthia Garcia, Vice President

Date

A Spanish version of this document is available on the Town's election webpage at www.chinoaz.net/468/ or upon request from the Chino Valley Town Clerk's Office, 202 N. State Route 89; (928) 636-2646, ext. 1052; clerks@chinoaz.net.

Una versión en español de este documento está disponible en el sitio web dedicado a las elecciones del Pueblo al www.chinoaz.net/468/ ó a petición de la Oficina del Secretario Municipal Chino Valley, 202 N. State Rt 89; (928) 636-2646, extensión 1052; clerks@chinoaz.net.