

#16  
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ORDINANCE NO. 4125

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING A RENEWAL OF AN AGREEMENT BETWEEN EL PASO NATURAL GAS COMPANY AND THE CITY OF CHANDLER FOR AN ENCROACHMENT PERMIT FOR THE USE OF PUBLIC PROPERTY BY EL PASO NATURAL GAS COMPANY

WHEREAS, El Paso Natural Gas Company is a natural gas company as defined by the Natural Gas Act of 1938, as amended, and as such is primarily engaged in open-access transportation of natural gas; and

WHEREAS, the City of Chandler is authorized to grant, renew, deny, and terminate Agreements for the use of its public property, pursuant to the Charter and City Code of Chandler, and by virtue of federal and state statutes, by the City's police powers, by its authority over its public rights-of-way and highways as defined in Chapter 46 of the Chandler City Code, and by other City powers and authority; and

WHEREAS, the City of Chandler and El Paso Gas Natural Company executed its first Agreement to maintain gas pipeline on public property in the City on August 29, 2003, as authorized by Resolution No. 3678 adopted and approved by the Chandler City Council; and

WHEREAS, the parties have agreed to a renewal agreement pursuant to the terms set forth in this Ordinance,

WHEREAS, the City Council has reviewed the terms and conditions of the Agreement with El Paso Natural Gas Company and believes it to be in the best interests of the citizens of the City of Chandler;

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

SECTION I: That the Mayor of the City of Chandler is herewith authorized to execute the renewal of an agreement between El Paso Natural Gas Company and the City of Chandler for an encroachment permit for the use of public property by El Paso Natural Gas Company in which the parties agree that there will be an annual footage fee of \$0.883 per square foot of public property reserved for use for 2009. This fee includes a catch-up provision for unpaid fees for ROW Crossing. For the first year of the agreement the use fee will be \$14,548.56. Fees are also outlined for any additional footage installed in City property or right of way after adoption of the agreement, as well as an escalator clause applied each year based on the Consumer Price Index. The company will also pay a \$5,925 Temporary Expansion Fee for each subsequent permit it requires for new construction or maintenance of its system. This Expansion Fee allows for the additional

space required for use during such work on the system on an exclusive basis. It will also pay any applicable City, county and state transaction privilege and use tax, as well as all applicable encroachment permit fees and pavement restoration fees as dictated by City Code.

SECTION II: That the various City officers and employees be and they are hereby authorized and directed to perform all acts necessary to give effect to this Ordinance.

INTRODUCED AND TENTATIVELY APPROVED by the Mayor and City Council of the City of Chandler, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

PASSED AND ADOPTED by the Mayor City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
*[Signature]*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4125 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2009 and that a quorum was present thereat.

\_\_\_\_\_  
City Clerk

Published:

**AGREEMENT FOR THE USE OF PUBLIC PROPERTY BETWEEN EL PASO  
NATURAL GAS COMPANY AND THE CITY OF CHANDLER FOR  
OPEN-ACCESS TRANSPORTATION OF NATURAL GAS**

This Agreement for the Use of Public Property (hereinafter "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Chandler, Arizona, a political subdivision of the State of Arizona (hereafter "CITY"), and El Paso Natural Gas Company, a Delaware corporation (hereinafter "COMPANY").

WHEREAS, COMPANY is a natural gas company as defined by the Natural Gas Act of 1938, as amended, and as such is primarily engaged in open-access transportation of natural gas; and

WHEREAS, the City of Chandler is authorized to grant, renew, deny, and terminate Agreements for the use of its public property, pursuant to the Charter and City Code of Chandler, and by virtue of federal and state statutes, by the CITY'S police powers, by its authority over its public rights-of-way and highways as defined in Chapter 46 of the Chandler City Code, and by other CITY powers and authority; and

WHEREAS, CITY and COMPANY executed its first Agreement to maintain gas pipeline on public property in the City on August 29, 2003; and

WHEREAS, COMPANY has agreed to provide and maintain accurate maps showing the location of all its facilities in the City, and other facilities it will use on both public and private property within the City, and to comply with such other mapping requirements as CITY may establish from time to time; and

WHEREAS, COMPANY has agreed to comply with Public Property use requirements that CITY may establish from time to time, and

WHEREAS, the parties agree that their mutual goal has been to establish as the fees herein the fair market value of the property and use being granted to COMPANY by this Agreement.

NOW, THEREFORE, CITY hereby grants COMPANY an Agreement to maintain its pipeline on certain public property in the City under the following terms and conditions:

**SECTION 1. DEFINITIONS**

The terms, phrases, words and their derivatives used in this Agreement shall have the meanings given in Chapter 46 of the Chandler City Code, as amended.

"Hazardous Substances" for purposes of this Agreement means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

## **SECTION 2. PERMISSION GRANTED**

### **2.1. Grant.**

**2.1.1.** Subject to the provisions of this Agreement and to the Chandler City Code, CITY grants to COMPANY the nonexclusive, revocable permit, right and privilege to maintain its established natural gas pipeline within the City of Chandler and on public right-of-way. Any addition, modification or extension to the current pipeline is subject to application for additional Agreements or an amendment to this permit, and to all the encroachment permit requirements of City Code Chapter 46.

**2.1.2.** No component or part of COMPANY'S System shall be installed, constructed, located on, or attached to any property within the CITY by COMPANY until COMPANY has, for those facilities to be located on Public Property obtained additional encroachment permits, pursuant to Chapter 46 of the Chandler City Code. Additionally, COMPANY shall comply with all other provisions of the Chandler City Code, and other relevant City regulations.

**2.1.3.** Any privilege claimed under this Agreement by COMPANY in any public street or other Public Property shall be subordinate to any prior or subsequent lawful occupancy or use thereof by the CITY or any other governmental entity, shall be subordinate to any prior lawful occupancy or use thereof by any other person, and shall be subordinate to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement.

### **2.2. Description of the System.**

COMPANY is not a public utility for the purposes of title 9, chapter 5, article 1, Arizona Revised Statutes. COMPANY'S System consists of a natural gas pipeline and appurtenances necessary to transport natural gas through the pipeline. The gas pipeline may also include related conduit and fiber optics necessary to monitor the gas system. This Permit is issued upon the condition that COMPANY is not, and continues during the duration of this Agreement not to be such a public utility. Should it be determined that COMPANY is a public utility or public service corporation, or if COMPANY desires to change the components of any of the System in a manner that changes its primary purpose, as opposed to technological advancement, COMPANY shall apply to CITY and obtain all appropriate Permits and Licenses.

### **2.3. Location of the System.**

COMPANY'S System is located as shown on the maps attached hereto and incorporated herein by reference. If COMPANY intends to construct or install any additional facilities or improvements on Public Property, COMPANY shall submit an Encroachment Permit Application(s) together with the details, plans and specifications for CITY review and approval, and pay all applicable application, review and inspection fees prior to any and all construction work performed, pursuant to the rights granted under this Agreement, including the installation, operation, maintenance, location and attachment of any and all of the System. Such Encroachment Permit(s) shall be identified by CITY log number, made a part hereof and referenced as a summary of its System location as Exhibit 1 and updated yearly and on file with the City Clerk's Office.

## **SECTION 3. SCOPE**

### **3.1. Compliance with Chapter 46.**

This Agreement satisfies the requirements of and is in accordance with the provisions of Chapter 46 of the Chandler City Code for those facilities of COMPANY, which are already installed on public property.

### **3.2 Compliance with Laws.**

**3.2.1.** COMPANY shall comply with all applicable Laws, including but not limited to, the Chandler City Code, in the exercise and performance of its rights and obligations under this Agreement. There is hereby reserved to CITY the power to amend any section of the City Code so as to require additional or greater standards of construction, operation, maintenance or otherwise pursuant to the CITY'S lawful police powers or as provided in the Agreement unless preempted by Federal Law.

**3.2.2.** COMPANY is subject to and shall comply with the general requirements for encroachment permits set forth in Section 46-2 of the Chandler City Code including, but not limited to, those provisions regarding relocation (46-2.6 F), abandonment or removal (46-2.7), and revocation (46-2.11).

**3.2.3.** If it is necessary for COMPANY to comply with any law or regulation of the Federal Energy Regulatory Commission (FERC) to engage in the business activities anticipated by this Agreement, COMPANY shall comply with such laws or regulations as a condition precedent to exercising any rights granted by this Agreement. Provided, however, no such law or regulation of FERC shall enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.

**3.2.4.** Upon request COMPANY shall provide CITY with regular reports, as reasonably needed, to establish COMPANY'S compliance with the various requirements and other provisions of this Agreement.

### **3.3. Reservation to CITY.**

There is hereby reserved to CITY every right and power which is required to be herein reserved or provided by any applicable ordinance or the Charter of the City, and COMPANY, by its execution of this Agreement, agrees to be bound thereby and to comply with any applicable action or requirements of CITY in its reasonable exercise of such rights or power, heretofore or hereafter enacted or established. Neither the granting of any Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of CITY.

### **3.4. Damage to Public Property.**

Whenever the installation, removal, or relocation of any of COMPANY'S System is required or permitted under this Agreement, and such installation, removal or relocation shall cause Public Property to be damaged, COMPANY, at its sole cost and expense, shall promptly repair and return Public Property in which the System components are located to a safe and satisfactory condition in accordance with applicable laws, with provisions in the City of Chandler Utility Manual and the Maricopa Association of Governments (hereinafter referred to

as "MAG") and the City's supplements to MAG, reasonably satisfactory to the City Engineer. If COMPANY does not repair the site as just described, then CITY shall have the option, upon fifteen (15) days prior written notice to COMPANY, to perform or cause to be performed such reasonable and necessary work on behalf of COMPANY and to charge COMPANY for the proposed costs to be incurred or the actual costs incurred by the CITY at CITY's standard rates, plus an administrative fee of fifteen percent (15%). Upon the receipt of a demand for payment by CITY, COMPANY shall, within thirty (30) days, reimburse CITY for such costs. For any pavement cuts by COMPANY, COMPANY agrees to restore the pavement and to reimburse the CITY for all costs arising from the reduction in the service life of any public road, in accordance with the provisions of Chapter 46 of the Chandler City Code and the fees established by the CITY pursuant thereto. COMPANY agrees to pay within thirty (30) days from the date of issuance of an invoice from CITY.

### **3.5. Hazardous Substances.**

COMPANY is responsible for proper investigation and management of all Hazardous Substances under its control, including Hazardous Substances that it uses, generates or disposes of, and must comply with all Environmental Laws in carrying out its obligations under this Agreement. In the event COMPANY releases to the environment Hazardous Substances under its control, to the extent that a governmental agency with jurisdiction requires reporting, investigation, cleanup or remedial measures to be taken, COMPANY shall, at its sole cost and expense, promptly undertake such required actions. If COMPANY discovers a Preexisting Environmental Condition, COMPANY shall immediately notify the CITY.

### **3.6. Blue Stake.**

COMPANY shall comply with A.R.S. §§ 40-360.21 through 40-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of COMPANY's facilities upon receipt of a locate call or as promptly as possible, but in no event later than two (2) working days. A copy of the Agreement or proof of membership shall be filed with the CITY.

## **SECTION 4. FEES AND CHARGES**

**4.1. Application Fee.** COMPANY shall be solely responsible for the payment of all fees and charges in connection with COMPANY'S performance under this Agreement. COMPANY agrees to pay CITY for the administrative costs of processing this Application, an Application Fee in the amount of Two Thousand Dollars (\$2,000.00) prior to submittal for approval of this Agreement to the City Council, receipt of which is hereby acknowledged.

**4.2. Annual Use Fee.** For the first year of the agreement there is an annual fee of \$14,548.56 due on the date of execution of this agreement. The fee is based on a consumer price index adjustment of the last annual use fee paid by the original El Paso Use Agreement established in City of Chandler Resolution No. 3678. That fee (\$.883 per foot) was based on a width of six feet for the entire distance for each pipeline measuring two feet in diameter, installed on or in City property or right of way. This fee includes a catch-up provision for unpaid fees for ROW Crossing amendments according to Exhibit 1. This fee will also apply to any additional footage installed in City property or right of way during this first year. For the second through fifth year of the agreement, the fee shall

be escalated annually on the permit anniversary date in an amount equivalent to the Consumer Price Index-All Urban Consumers, West Urban, All Items for each square foot installed within the City's property or right of way described in the permit. Company shall pay to City the Annual Footage Fee upon execution of this Agreement and on each annual anniversary thereafter.

**4.3. Invoices.** Invoices will be sent to El Paso Natural Gas Company, Attn: Land Manager, P.O. Box 1087, Colorado Springs, CO 80944.

**4.4. Temporary Expansion Fee.** COMPANY shall pay to City a Temporary Expansion Fee of Five Thousand Nine Hundred Twenty Five Dollars (\$5,925) each time COMPANY performs any work in or on the City's property or right of way requiring a City of Chandler permit. This Temporary Expansion Fee is a part of the rental fee for use of the City's property and is in addition to and not a part of the regular encroachment permit fees and other fees payable pursuant to the Chandler City Code. This fee will be adjusted on each anniversary year by the same consumer price index factor as in Section 4.2.

**4.5. Permit Fees and Construction Costs.**

In addition to the fees and taxes set forth herein above, COMPANY shall pay those fees and charges for Encroachment Permit applications, inspection and testing for ROW maintenance such as soil compaction, plan review and any other fees adopted by CITY and applicable to persons doing work in CITY Right-of-Way. Additionally, if the CITY elects to retain outside inspectors or other persons to review and inspect COMPANY's plans, specifications and construction of the System, COMPANY shall reimburse the CITY for its actual costs incurred in connection therewith.

**4.6. Liquidated Damages.**

**4.6.1.** COMPANY understands and agrees that failure to comply with any time and performance requirements in this Agreement or the requirements of Chapter 46 of the Chandler City Code will result in damage to the CITY, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the parties hereby agree to the liquidated damages specified below. The following amounts per day may be chargeable to the COMPANY for the following concerns:

**4.6.1.1.** Each failure to properly restore the public Right-of-Way or to correct related violations of specifications, code ordinance or standards, unless preempted by federal law, within seven (7) working days of having been notified by the CITY to correct such defects – two hundred dollars (\$200) per day;

**4.6.1.2.** Each failure not covered by s Section 4.6.1.1 of this Agreement to comply with the provisions of this Agreement or applicable City Code provision or law – one hundred dollars (\$100) per day.

**4.6.2.** If the City Manager concludes that COMPANY may be liable for liquidated damages, the City Manager shall issue to COMPANY by certified mail a Notice of Intention to Assess Liquidated Damages. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. COMPANY shall within thirty (30) days of receipt of such notice:

**4.6.2.1.** Respond to the CITY in writing, contesting the CITY's assertion of violation and providing such information or documentation as may be necessary to support COMPANY position; or

**4.6.2.2.** Cure any such violation (and provide written evidence of the same), or, in the event that, by the nature of the violation, such violation cannot be cured within such thirty (30) day period, take reasonable steps to cure said violation and diligently continue such efforts until said violation is cured. COMPANY shall report to the CITY, in writing, at thirty (30) day intervals as to COMPANY's efforts, indicating the steps taken by COMPANY to cure said violation and reporting COMPANY's progress until such violation is cured.

**4.6.3.** In the event of a Notice of Violation by CITY, COMPANY shall have fifteen (15) days from the date of Notice to request a hearing in accordance with the procedures set forth in Section 1-7, 46-2.12 and 46-2.13 of the Chandler City Code.

**4.6.4.** In the event of CITY'S Notice of Intent to Assess Liquidated Damages, COMPANY shall have fifteen (15) days from the date of Notice to request a hearing in accordance with the procedures set forth in Section 1-7, 46-2.12 and 46-2.13 of the Chandler City Code.

**SECTION 5. TAXES.** COMPANY shall pay any applicable City, county and state transaction privilege and use tax. The Annual Footage Fee shall not be an offset to the transaction privilege tax, which COMPANY is obligated to pay. The tax structure according to definitions in the Chandler City Tax Code will be applied to determine which activities of COMPANY are taxable.

## **SECTION 6. TERM OF AGREEMENT**

The term of this Agreement and duration of the rights, privileges and authorizations granted hereunder shall be for ten (10) years from the effective date. The effective date of the Agreement is the date upon which the Mayor of Chandler signs the Agreement. This Agreement may be renewed upon mutual agreement of the parties.

## **SECTION 7. ACCEPTANCE AND EFFECTIVE DATE**

### **7.1. Written Acceptance.**

COMPANY'S execution of this Agreement shall constitute its acceptance of Agreement as granted and its agreement to be bound by and to comply with and to do everything, which is required of the COMPANY by this Agreement. Within twenty (20) days after the execution of this Agreement by CITY, or within such extended period of time as the City Council in its discretion may authorize, COMPANY shall file with the City Clerk the executed original of this Agreement evidencing its acceptance of the Encroachment Permit and this Agreement. COMPANY'S signature shall be acknowledged by COMPANY before a notary public.

### **7.2. Validity of Agreement.**

COMPANY shall acknowledge, as a condition of acceptance of this Agreement and Encroachment Permit, that COMPANY was represented throughout the negotiations of the Agreement and Encroachment Permit by its own attorneys and had opportunity to consult with its

own attorneys about its rights and obligations regarding same. COMPANY has reviewed CITY's authority to execute and enforce this Agreement, and has reviewed all applicable law, both federal and state, and, after considering same, COMPANY acknowledges and accepts the right and authority of CITY to execute this Agreement, to issue this Encroachment Permit and to enforce the terms herein, and COMPANY agrees it shall not now or at any time hereafter contest or challenge CITY's authority under applicable federal, state and local law, unless preempted by Federal Law, to enter into and enforce this Agreement in any city, state or federal court.

## **SECTION 8. INSURANCE AND INDEMNITY**

### **8.1. General Requirements.**

A. COMPANY, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.

B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager

C. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.

D. If any of the insurance policies are not renewed prior to expiration, payments to the COMPANY may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the COMPANY

E. All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

F. COMPANY's insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

G. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of COMPANY's acts, errors, mistakes, omissions, work or service.

H. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of COMPANY shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require COMPANY to secure payment of such

deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

I. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice (ten [10] days due to non-payment of premium) has been given to CITY.

J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the COMPANY with reasonable promptness in accordance with the COMPANY's information and belief.

K. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the COMPANY until such time as the COMPANY shall furnish such additional security covering such claims as may be determined by the CITY.

## **8.2. Proof of Insurance-Certificates of Insurance.**

A. Prior to commencing work or services under this Agreement, COMPANY shall furnish to CITY Certificates of Insurance, issued by COMPANY's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.

B. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.

C. All Certificates of Insurance shall identify the policies in effect on behalf of COMPANY, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.

D. CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise COMPANY of any deficiencies in such policies and endorsements, and such receipt shall not relieve COMPANY from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of COMPANY's obligations under this Agreement.

## **8.3. Required Coverage.**

Such insurance shall protect COMPANY from claims set forth below which may arise out of or result from the operations of COMPANY under this Contract and for which COMPANY may be legally liable, whether such operations be by the COMPANY or by a Sub-consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as

Insurance Services Office, Inc., policy form CG 00 01 12 04 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

- A. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the COMPANY's employees;
- B. Claims for damages insured by usual personal injury liability coverage;
- C. Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- D. Claims involving contractual liability insurance applicable to the Company's obligations under the Indemnification Agreement;

**8.4. Commercial General Liability - Minimum Coverage Limits.**

The Commercial General Liability insurance required herein shall be written for not less than \$5,000,000 limits of liability. Any combination between general liability and excess general liability alone amounting to a minimum of \$5,000,000 per occurrence and an aggregate of \$10,000,000 in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, CG 20 26 07 04.

**SECTION 9. INDEMNITY**

COMPANY and all other persons using, acting, working or claiming through this Agreement, shall and hereby agree to jointly and severally pay, indemnify, defend, protect, and hold harmless CITY, its council members, officers, agents and employees from and against any and all costs, expenses, claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including without limitation, reasonable attorney's fees and costs of defense arising or alleged to have arisen directly or indirectly, in whole or in part, out of or in connection with COMPANY'S activities undertaken pursuant to this Agreement of any use of Public Property, including without limitation any injury or damages or cause claimed or caused by any employees, contractor, subcontractor, tenants, subtenants, agents or other person upon or using the area where COMPANY'S facilities are located or anywhere related to this Agreement and Agreement. The exception are those costs, expenses, claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs, and expenses incurred in connections therewith, including without limitation reasonable attorney's fees and costs of defense arising or alleged to have arisen directly, or indirectly, in whole or in part, out of or in connection with the CITY, its council members, officers, agents and employees negligent actions or willful misconduct arising upon or through use of the area where COMPANY facilities are located or anywhere related to this Agreement.

**SECTION 10. TRANSFERABILITY**

**10.1. City Consent Required.**

The right, privileges and Agreement granted hereunder shall not be leased, assigned, sublet, sold or otherwise transferred either in whole or in part, nor shall title thereof, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except COMPANY, either by act of COMPANY or operation of law, without the express written consent of CITY by resolution passed by the City Council, which consent shall not be unreasonably withheld or delayed. The new permittee as approved by CITY shall be equally subject to all the obligations and privileges of the original Agreement, including any amendments, which will remain in full effect, as if the new permittee was the original permittee. Prior to any proposed assignment becoming final, COMPANY shall seek the consent of CITY to such proposed assignment. CITY'S discretion to approve or disapprove shall be limited to whether COMPANY has complied with Sections 9.1.1 and 9.1.2. If CITY fails to approve or disapprove within thirty (30) days following receipt of an application, the application shall be deemed approved.

**10.1.1.** The approval of any change shall include an Assignment Agreement form to be signed by Assignee, Assignor and CITY. COMPANY shall provide CITY a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, transfer or lease, certified and sworn to as correct by COMPANY. COMPANY shall notify CITY within sixty (60) days of any change in mailing address.

**10.1.2.** The assignment of this Agreement, including any amendments, shall be binding on the Assignee as upon the Assignor of the Agreement as if Assignee had originally executed the Agreement for the full term of the Agreement, and shall include the following:

**10.1.2.1.** The proposed transferee has read, accepts, and agrees to be bound by the Agreement; and

**10.1.2.2.** The proposed transferee assumes all obligations, liabilities and responsibility under the Agreement for the acts and omissions of COMPANY, known and unknown, for all purposes, and agrees that the transfer shall not permit transferee to take any position or exercise any right which COMPANY could not have exercised; and

**10.1.2.3.** COMPANY and the proposed transferee shall submit to CITY a description of the nature of the transfer.

## **SECTION 11. NON-EXCLUSIVE RIGHTS**

### **11.1. Non-Exclusive Rights.**

This grant is not exclusive, and nothing herein contained shall be construed to prevent CITY from granting other like or similar grants or privileges to any other person, firm or corporation, or to deny to or lessen the powers and privileges granted CITY under the Constitution and laws of the State of Arizona.

### **11.2. Priority Rights.**

Any and all rights granted to COMPANY under this Agreement, which shall be exercised at COMPANY'S sole cost and expense, shall be subject to the prior and continuing right of CITY to use all Public Property exclusively or concurrently, with any other person or persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions,

encumbrances, and claims of title which may affect Public Property. Nothing in this Agreement shall be construed to grant, convey, create, or vest a perpetual real property interest in land to COMPANY, including any fee or leasehold interest, easement, or any franchise rights.

## **SECTION 12. REVOCATION OF AGREEMENT**

### **12.1. Revocation.**

In addition to the provisions of Chapter 46 of the Chandler City Code, this Agreement shall be subject to revocation, subject to notice and hearing as set forth herein, for the following reasons:

- A. The COMPANY fails to comply with the terms and conditions of the Agreement or other applicable law;
- B. The COMPANY fails to make the payments in the amounts and at the times specified in this Agreement;
- C. The COMPANY ceases to be a natural gas pipeline services provider in the CITY;
- D. The COMPANY fails to provide current, accurate as built plans and maps showing the location of all facilities installed or constructed in the CITY;
- E. False representations made in the application process, or any other information provided to CITY;
- F. Attempt to evade any material provisions of this Agreement or practice any fraud or deceit upon CITY.

### **12.2. Notice and Hearing Prior to Revocation.**

Revocation pursuant to this section may occur only if COMPANY is given written notice of the defect in performance and the defect in performance is not cured within sixty (60) days of the notice, unless CITY finds that the defect in performance is due to intentional misconduct, is a violation of criminal law or is part of a pattern of violations if COMPANY has already had notice and an opportunity to cure. CITY shall hold a hearing before revoking this Agreement if requested by COMPANY.

### **12.3. Cancellation by COMPANY.**

This Agreement may be canceled prior to its date of expiration by COMPANY upon express written notice to CITY.

## **SECTION 13. PROPRIETARY INFORMATION**

Proprietary information disclosed by COMPANY for the purposes hereunder shall mean any document or material clearly identified by COMPANY, as confidential (hereinafter "Proprietary Information"). Such Proprietary Information shall include, but not be limited to, any customer lists, financial information, technical information, or other information clearly identified as confidential by COMPANY, and pertaining to services provided to its customers.

### **13.1. Notice to Company.**

Proprietary Information disclosed by COMPANY hereunder to CITY or its constituent departments shall be regarded as proprietary as to third parties. If CITY receives a request to disclose such information, CITY shall notify COMPANY of such request and allow COMPANY a

reasonable opportunity to defend its information from disclosure. The foregoing shall not apply to any information which is already in the public domain; however, if public domain information is included with Proprietary Information on the same document, CITY shall only disclose those portions within the public domain without providing COMPANY notice as provided hereinabove.

**13.2. Public Records Law.**

Notwithstanding any provision in this Agreement, COMPANY acknowledges and understands that CITY is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Laws (A.R.S. § 39-121 et. seq.).

**13.3. Gratuities.**

CITY may, by written notice, terminate this Agreement, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by COMPANY or a representative of the COMPANY to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the COMPANY.

**SECTION 14. NOTICE**

**14.1. Written.**

All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted through the U.S. mail, by means or private delivery systems, or by facsimile transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by private delivery systems, as follows:

**CITY OF CHANDLER**  
Attention: Margaret Coulter  
P.O. Box 4008, Mail Stop 604  
Chandler, Arizona 85244-4008  
Phone: (480) 782-2221  
Fax: (480) 782-2209  
Email: [margaret.coulter@chandleraz.gov](mailto:margaret.coulter@chandleraz.gov)

**EL PASO NATURAL GAS COMPANY**  
Attention: Manager, Land Department  
P.O. Box 1087  
Colorado Springs, Colorado 80903  
Phone: (719) 520-3727  
Fax: (719) 520-4886

**14.2. On-Call Assistance.**

COMPANY shall be available to staff employees of any CITY department having jurisdiction over COMPANY'S activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of its System. CITY may contact by telephone the control center operator at telephone number (800) 334-8047 regarding such problems or complaints.

**SECTION 15. EXHIBITS**

All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement, are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

**SECTION 16. FAILURE OF CITY TO ENFORCE AGREEMENT NO WAIVER**

COMPANY shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of CITY upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

**SECTION 17. FORCE MAJEURE**

With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon COMPANY, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by COMPANY and is beyond its reasonable control.

This Agreement executed this \_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF CHANDLER, an Arizona municipal corporation      El Paso Natural Gas Company

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Rolando I. Trevino, Attorney-In-Fact

Attest:

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Title:

APPROVED AS TO FORM:

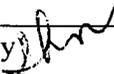
\_\_\_\_\_  
City Attorney 

Exhibit 1 to Encroachment  
Permit for Use of Public Property

El Paso Natural Gas Pipeline ROW Crossings in Chandler (System Locations)

EPNG Parcel Number	Street Name	Exhibit (Dwg.) Number	El Paso Footage*	El Paso Footprint**
15a	Frye Rd	2214.0-1.00	40.0	240.0
16	Chandler Blvd.	2214.0-1.00	88.0	528.0
17	Ray Rd.	2214.0-2.00	98.0	588.0
18	Price Rd.	2226.0-2.00	115.0	690.0
19	Fairview St.	2226.0-3.00	60.0	360.0
30	Dobson Rd.	2072.0-1.00	83.0	498.0
31	Alma School	2072.0-2.00	83.0	498.0
32	Arizona Ave.	2072.0-3.00	110.0	660.0
33	Carriage Ln.	2222.0-1.00	60.0	360.0
34	Dobson Rd.	2222.0-1.00	83.0	498.0
35	Alma School	2222.0-1.00	83.0	498.0
36	Arizona Ave.	2222.0-2.00	110.0	660.0
			1,013.0	6,078.0***
2008 amendments****				
Dual line	Dublin Ln.		50.0	300.0
Dual line	Harrison St.		60.0	360.0
Dual line	Galveston St.		80.0	480.0
Dual line	Chandler Blvd.		120.0	720.0
Dual line	Chicago St.		60.0	360.0
Dual line	Frye Rd.		80.0	480.0
New Install EP706-0302-9/20/2006	Frye Rd./Ellis St.		140.0	840.0
			590.0	3540.0
			1,603.0	9,618.0***8

\* Linear footage

\*\* (Linear footage) x (6 foot width) – square footage

\*\*\* Estimated feet for ROW fee determination-2003

\*\*\*\* Estimated feet for ROW fee determination-2008

COMPANY,  
EL PASO NATURAL GAS COMPANY

CITY OF CHANDLER,  
A MUNICIPAL CORPORATION

BY: \_\_\_\_\_ (signature)  
\_\_\_\_\_ (print)

\_\_\_\_\_  
MAYOR

Title: \_\_\_\_\_

## **EXHIBIT 2**

**ARIZONA LAW:** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

Pursuant to the provisions of A.R.S. § 41-4401, COMPANY hereby warrants to the City that the COMPANY and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "COMPANY Immigration Warranty").

A breach of the COMPANY Immigration Warranty (Exhibit 2-1) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The City retains the legal right to inspect the papers of any COMPANY or Subcontractor employee who works on this Contract to ensure that the COMPANY or Subcontractor is complying with the COMPANY Immigration Warranty. The COMPANY agrees to assist the City in the conduct of any such inspections.

The City may, at its sole discretion, conduct random verifications of the employment records of the COMPANY and any Subcontractors to ensure compliance with COMPANY Immigration Warranty. COMPANY agrees to assist the City in performing any such random verifications.

The provisions of this Article must be included in any contract the COMPANY enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In accordance with A.R.S. §35-397, COMPANY the hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-397, COMPANY hereby certifies that the offeror does not have scrutinized business operations in Sudan.

**EXHIBIT 2-1**

**COMPANY Immigration Warranty  
To Be Completed by COMPANY Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the COMPANY and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form COMPANY shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

<b>Contract Number:</b>		
<b>Name (as listed in the contract):</b>		
<b>Street Name and Number:</b>		
<b>City:</b>	<b>State:</b>	<b>Zip Code:</b>

I hereby attest that:

1. The COMPANY complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees; and

**Signature of COMPANY (Employer) or Authorized Designee:**

\_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date (month/day/year):** \_\_\_\_\_

**EASEMENT ATTACHMENTS**

On File in City Clerk's Office