

ORDINANCE NO. 18-01

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF HOLBROOK, ARIZONA, GRANTING A FRANCHISE FOR THE OPERATION OF A GAS PLANT, SYSTEM, PIPELINES AND WORKS IN THE CITY, CONTINGENT ON APPROVAL BY A MAJORITY VOTE OF THE QUALIFIED ELECTORS OF THE CITY.

WHEREAS, the Mayor and Council of the City of Holbrook, Arizona (the "City") previously granted a franchise for distribution of gas within the corporate boundaries of the City, and that franchise is expiring this year; and

WHEREAS, the Mayor and Council of the City determine that the City should grant a new franchise to UNS Gas, Inc. (the "Company");

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF HOLBROOK, ARIZONA AS FOLLOWS:

Section 1. That the City, a municipal corporation in Navajo County, Arizona, hereby grants to and vests in the Company, an Arizona public service corporation, a franchise (the "Franchise") with the right to operate a gas plant, system, pipelines and works in the City, as now or hereafter constituted, and the authority, license, power and privilege to maintain, construct, build, equip, conduct or otherwise establish and operate in said City, works or systems and plants to manufacture, use, sell, store, distribute, convey or otherwise establish, conduct, serve, supply or furnish the inhabitants of said City and others, and to the City whenever it may desire to contract therefore, gas for light, fuel, power, heat and any and all other useful purposes, and the Company hereby is granted passage, right-of-way and the right to occupy and use in any lawful way during the life of this Franchise every and any and all City streets, alleys and other dedicated public rights-of-way, now existing or may be hereinafter extended, and any other property or premises owned by the City with the prior approval of the City, for every and any such service, use, effect and lawful purpose as herein mentioned.

Section 2. The 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 unreasonably conflict with water or other pipes, sewer (including storm sewers and publicly-owned drainage facilities of all kinds), or any other pre-existing underground installations, and that all work done in said public property or other public premises of the City by the Company shall be done with the utmost diligence and the least inconvenience to the public or individuals, and that the Company shall, subject to the reasonable approval of the City and within a reasonable time, restore such public property or other public premises excavated by it to their original condition as nearly as practicable. The Company shall remove or relocate its facilities as and when required by the City to accommodate right-of-way improvements for the public benefit; said

removal or relocation shall be made at the sole cost and expense of the Company, unless the Company can demonstrate that its facilities were lawfully installed prior to the dedication to or acquisition by the City of the property in question. Completed or "as-built" plans of any facilities installed or relocated by the Company shall be submitted by the Company to the City as may be required by the City's Public Works Director. All work performed by the Company and/or its agents shall be in accordance with applicable City codes, federal and state laws, policies and procedures of the City and other applicable regulations.

Section 3. Prior to commencing any work in a right-of-way (except in emergency circumstances), the Company shall submit plans of work to be performed to the City's Public Works Director for review and approval and shall obtain any permit necessary for such work. The Company, upon receipt from the City of any finalized plans that would require construction or relocation of Company facilities, shall advise the City 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 the Company, the Company shall have six (6) months from the receipt of such finalized plans in which to design and to complete construction or relocation of the necessary facilities.

Representatives of the City and the 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 City rights-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 the Company, if any, for such projects.

Section 4. The Company shall defend the City against all claims for injury to any person or property caused by the negligence of the Company in the construction or operation of its property, and in the event of a determination of liability shall indemnify the City. More particularly, the Company does hereby agree to indemnify and hold harmless the City from any and all liability, claim, demand or judgment arising out of any injury to any person or property because of negligence in whole or in part arising out of the construction, repair, extension, maintenance or operation of its equipment in connection with this Franchise.

Section 5. The 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 program to adequately insure and/or protect the legal liability of the 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 the City. Such insurance program will provide protection for bodily injury and property damage arising from the operation by the Company of its facilities. The Company shall include the City as an additional insured to such liability insurance program, effective for all times during the existence of this

Franchise. The Company shall file with the City documentation of such liability insurance program within fifteen (15) calendar days following the request of the City. The policy limits or any insurance maintained in compliance with this section shall not limit the Company's indemnification requirements under Section 4 of this Franchise.

Section 6. The rates and charges to be charged by the Company for furnishing gas service hereunder and the rules and regulations to be made and enforced by the 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. The Company shall have the right and privilege of assigning this Franchise and all rights and privileges granted herein, subject to the prior approval of the City, which shall not be unreasonably withheld, and whenever the word "Company" appears herein, it shall be construed as applying to its successors, lessees and assigns.

Section 8. The Company shall pay to the City in consideration of the grant of this Franchise a sum equal to two percent (2%) of all revenues of the 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 the Company's distribution system within the present and any future corporate limits of the City, as shown by the Company's billing records. Said payments shall be in lieu of any and all fees, charges or exactions of any kind otherwise assessed by the City in any way associated with the Company's use of the rights-of-way, including, but not limited to, the construction of the 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 quarterly amounts within thirty (30) days after the end of each calendar quarter.

Notwithstanding any provision contained herein to the contrary, the 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 the City: (a) general ad valorem property taxes; (b) transaction privilege and use tax as authorized by law and collected by the Company for its retail sales to its customers within the present and any future corporate limits of the City; and (c) other charges, taxes or fees generally levied upon businesses by the City, 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 the City.

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

Section 9. This Franchise shall be accepted by the Company in writing, which acceptance shall be filed with the City within thirty (30) days after the passage of this Ordinance, and once so accepted, this Ordinance shall be a contract duly executed by and between the City and the Company.

Section 10. 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 11. This Franchise shall continue in full force and effect for a period of twenty-five (25) years from August 4, 2018 (the "Effective Date"); however, the City may terminate this Franchise in the event the City shall have formally found, after notice and hearing, the 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 12. All plant, system, pipelines, works, and all other physical property installed or operated by the Company in accordance with the terms of this Franchise shall be and remain the property of the Company, and upon expiration of this Franchise or any extension or renewal thereof, the Company is hereby granted the right to enter upon the public property or other public premises of said City for the purpose of removing any and all such plant, system, pipeline, works and other property of the Company, at any time within six (6) months after termination of this Franchise or any such extension or renewal thereof.

Section 13. Notwithstanding the formal Effective Date set forth in Section 11, the Franchise shall only become fully effective after its approval by a majority vote of the qualified electors of the City at a regular election or at a special election duly and regularly called by the City Council for that purpose. The Company shall reimburse all of the City's expenses incurred in conducting the franchise election (including any expenses charged to the City for conducting the election through the County of Navajo, pursuant to Section 14), but if more than one item is on the same ballot, the Company shall pay only that prorated portion of the City's election expenses determined by dividing all of the City's expenses by the total number of measures or offices presented on the ballot that the City is financially responsible for.

Section 14. The City shall contract with the County of Navajo (the "County") and the Navajo County Recorder (the "Recorder"), pursuant to Arizona Revised Statutes §§ 16-172 and 16-205(C), for the County to administer and use the County registration rolls to conduct the election provided for in Section 13. The City Clerk and the City Manager are hereby authorized to negotiate and execute on the City's behalf said contract with the County and the Recorder and to take any other actions necessary to cause and carry out the election provided for in Section 13.


PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Holbrook, Arizona, on April 24, 2018.


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Mayor

ATTEST:


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Cher Reyes, Clerk

APPROVED AS TO FORM:


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Marlene A. Pontrelli
Dickinson Wright PLLC
City Attorneys

ACCEPTED WITHOUT CHANGE:

UNS Gas, Inc.
By: Vice President

Date

CERTIFICATION

I hereby certify that the foregoing Ordinance No. 1801 was duly passed and adopted by the Mayor and Council of the City of Holbrook, Arizona, at a regular meeting held on April 24, 2018, that the vote thereon was 6 ayes, 0 nays, and that the Mayor and 5 Council members were present thereat.


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Clerk, City of Holbrook, Arizona