

DRAFT 11/7/25 MCT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AWARDING A FIFTEEN YEAR EXTENSION TO AN EXISTING NON-EXCLUSIVE FRANCHISE FOR THE DISTRIBUTION OF NITROGEN GAS BY AIR PRODUCTS MANUFACTURING CORPORATION AND AIR PRODUCTS AND CHEMICALS, INC.

WHEREAS, on September 12, 1978, by Ordinance No. 1906-78, Air Products and Chemicals, Inc., was granted a non-exclusive franchise for the conveyance of nitrogen gas through pipelines under, along and across public streets within the City of Sunnyvale; and

WHEREAS, by Ordinance No. 2090-83, adopted December 20, 1983, this franchise was assigned to Air Products Manufacturing Corporation; and

WHEREAS, by Ordinance No. 2373-91, adopted September 3, 1991, this franchise was amended to name both Air Products Manufacturing Corporation and Air Products and Chemicals, Inc. as Grantees; and

WHEREAS, by Ordinance 2507-95, adopted July 25, 1995, the franchise term was extended for fifteen years; and

WHEREAS, by Ordinance 2945-10, adopted December 14, 2010, the franchise term was extended again for fifteen years; and

WHEREAS, the Grantees have abided by all the requirements applicable to the current franchise term, which is scheduled to terminate at 12:00 midnight on December 31, 2025, and have requested to extend the franchise for a new fifteen-year period; and

WHEREAS, pursuant to Section 1602 of the Charter and Chapter 15.12 of the Sunnyvale Municipal Code ("SMC"), the City Council, after notice duly given, held a public hearing to consider extension of the existing franchise;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. FRANCHISE GRANTED. The City of Sunnyvale hereby grants to Air Products Manufacturing Corporation and Air Products and Chemicals, Inc., extension of the non-exclusive franchise for the purpose of installing, maintaining and using pipes and related appurtenances under, along and across public streets and places within the City of Sunnyvale for transmitting and distributing nitrogen gas for any and all purposes. This franchise is limited to the transmission and distribution of nitrogen gas only.

SECTION 2. TERM. The term for which this franchise extension is granted is fifteen (15) years, commencing January 1, 2026, and terminating at 12:00 midnight on December 31, 2040.

SECTION 3. CONSIDERATION. The Grantees shall pay to the City of Sunnyvale, as consideration for the granting of this franchise, the amounts set forth in the Franchise Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein.

SECTION 4. GENERAL CONDITIONS. This franchise is granted subject to the terms and conditions set forth in the Franchise Agreement attached hereto as Exhibit A.

SECTION 5. ACCEPTANCE OF FRANCHISE TERMS AND CONDITIONS. This franchise shall not become effective until the Grantees accept the franchise by executing the Franchise Agreement within ten (10) days after adoption of this ordinance.

SECTION 6. APPROVAL AND EXECUTION OF FRANCHISE AGREEMENT. The Franchise Agreement is hereby approved, and the City Manager is authorized to execute it on behalf of the City of Sunnyvale.

SECTION 7. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment, and

SECTION 8. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 9. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 10. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk
Date of Attestation: _____

LARRY KLEIN
Mayor

(SEAL)

APPROVED AS TO FORM:

REBECCA L. MOON
City Attorney

Attachments:

A. Franchise Extension Agreement

**FRANCHISE AGREEMENT
TO EXTEND TERM OF EXISTING FRANCHISE AND AMEND AND RESTATE
CERTAIN FRANCHISE TERMS**

THIS FRANCHISE AND AGREEMENT, dated _____, 2025, is between the City of Sunnyvale, a chartered municipal corporation of the State of California ("CITY"), and AIR PRODUCTS MANUFACTURING CORPORATION and AIR PRODUCTS AND CHEMICALS, INC., Delaware corporations ("GRANTEES").

RECITALS

WHEREAS, since 1978, GRANTEES have maintained a non-exclusive franchise in the City of Sunnyvale to transmit and distribute nitrogen gas through pipelines under, along, and across public streets within the CITY; and

WHEREAS, the City Council approved extensions to Grantees' franchise on July 25, 1995 (Ordinance No. 2507-95) and December 24, 2010 (Ordinance No. 2945-10); and

WHEREAS, the Grantees have abided by all of the requirements applicable to the current franchise term, which is scheduled to terminate at 12:00 midnight on December 31, 2025, and have requested to extend the franchise for a new fifteen-year period.

NOW, THEREFORE, in consideration of the award of an extension to the existing nonexclusive Franchise and of the mutual covenants and conditions as set forth herein, it is agreed as follows:

SECTION 1. FRANCHISE GRANTED. CITY grants to GRANTEES a nonexclusive franchise for the purpose of installing, maintaining and using pipes and related appurtenances under, along and across public streets and places within the CITY for transmitting and distributing nitrogen gas for any and all purposes. This franchise shall extend to such pipelines as are presently existing and shown on Exhibit A, attached to this Agreement and incorporated into it by reference, as well as to any future extensions of such lines or new lines for which GRANTEES apply for and receive an encroachment permit, pursuant to the provisions of Sunnyvale Municipal Code ("SMC") Chapter 13.08, or as the same shall be later amended. GRANTEES shall conduct their operations under the franchise in strict compliance with the Sunnyvale City Charter and Chapters 13.08 and 15.12 of the SMC, and any amendments thereto, together with all applicable laws and regulations of the State of California, the United States, or any regulatory agency having jurisdiction, as well as with all other applicable requirements of the SMC.

SECTION 2. TERM. The term for which this franchise is granted is fifteen years, commencing January 1, 2025, and terminating at 12 midnight on December 31, 2040.

SECTION 3. CONSIDERATION. The GRANTEES shall pay to CITY as consideration for the granting of this franchise a sum or sums computed as follows:

(a) An annual fee equal to \$1.72 per lineal foot of each gas carrying pipe now and hereinafter to be installed within the public streets, ways, alleys, and other public places within the CITY. No gas carrying pipe over eight (8) inches nominal inside diameter shall be installed under this franchise.

(b) An additional annual fee per customer location within the CITY having a connection to this franchise system equal to the product of One Thousand Seven Hundred Forty-Nine Dollars and Ninety- Five Cents (\$1,749.95) and the nominal inside diameter of the pipe, expressed in inches, at the property line of each customer location connected to each gas carrying pipe. In calculating the annual fee per customer location connection, GRANTEES will include in calculating this fee any customer who has a connection for service during any part of the calendar year or portion thereof for which the fee is payable. Each separate location receiving nitrogen gas shall occasion payment of the above annual fee.

(c) In no event will GRANTEES pay CITY pursuant to Section 3 an amount less than Ten Thousand Dollars (\$10,000.00) per calendar year, or portion thereof, for the term of the franchise. This Ten Thousand Dollar (\$10,000.00) payment shall be made each year in advance for each calendar year or portion thereof commencing January 1, 2026, and for the term of the franchise. In addition to the Ten Thousand Dollar (\$10,000.00) advance payment, any balance of said fees not paid by the advance will be paid concurrent with the annual filing with the Finance Department of a verified statement showing in detail the lineal feet of gas pipe installed, and a list of customers having connections during the prior calendar year or portion thereof under this franchise. Filing the verified statement with the Finance Department shall be done for the prior calendar year or portion thereof on the 10th day of January of each succeeding calendar year or portion thereof, or by the 10th day after franchise termination, whichever occurs first.

SECTION 4. FEE ADJUSTMENTS. The franchise fees provided for in subsections 3(a) and 3(b) herein shall each be subject to an annual increase of seven percent (7%) over the prior year rate, effective January 1 of each year of this Agreement. In no event, however, will the amount payable by GRANTEES under the franchise be less than the amount payable as prescribed in Section 3(c) above, without adjustment.

SECTION 5. DESIGN REVIEW AND INSPECTION FEES. The CITY shall have the right of prior review and approval of vertical and horizontal location of the pipe proposed to be installed under, along, and across public streets and places of the CITY, under the provisions of Chapter 13.08 of the SMC. For the review of the engineering documents and inspection of pipes installed, and other required services, the CITY shall be paid a fee as provided by the latest fee resolution adopted by the city council for right of way encroachments. The fee charged herein is in addition to the cost of any permit, license, or approval required by existing federal, state, or local laws.

SECTION 6. GRANTEES' DUTIES UPON CUSTOMER SERVICE DISCONTINUANCE. GRANTEES shall cap off the line of any customer whose service is discontinued.

SECTION 7. INSTALLATION OF PIPELINES IN STREET RIGHTS OF WAY AND CITY CONTROLLED EASEMENTS. Before performing any work or service on a street right of way or in a CITY controlled easement, GRANTEES shall comply with the

provisions of Chapter 13.08 of the SMC (as may be amended from time to time) and all requirements in permits issued pursuant to such chapter. All transmission crossings of a street by a pipeline shall be bored or jacked rather than laid in an open trench, unless otherwise approved by the city engineer. Wherever possible, pipelines shall be installed behind curb and gutter rather than in the street pavement.

GRANTEES shall restore the area behind and adjacent to the curb and gutter as nearly as practicable to the condition before such installation. If it is not possible to lay the pipe behind the curb and gutter or to bore a crossing, the City may require a structural overlay as specified by the city engineer to restore the lane in which the trench lies, or if the trench lies between lanes, up to 12 feet on each side of the trench when completed. A parking lane shall be considered a lane for the purposes of this section. Where the structural overlay extends to the lip of a gutter, a triangular wedge of the existing adjacent pavement shall be removed from alongside the lip in order that a smooth joinder will be formed between pavement and gutter.

SECTION 8. GRANTEES' ABANDONMENT OF PIPELINES. If GRANTEES abandon use of any or all of the pipelines installed under or pursuant to the franchise, then title to such pipelines shall vest in the CITY, unless, at CITY's option, it orders GRANTEES to remove such pipelines and restore the property to its original condition.

SECTION 9. PERFORMANCE GUARANTEE. GRANTEES shall submit to the CITY an appropriate surety or other bond in the amount of One Hundred Thousand Dollars (\$100,000.00) guaranteeing performance by GRANTEES of their obligations under the franchise. This performance bond shall be in addition to any other bonds required pursuant to the City's Encroachment Ordinance contained in Chapter 13.08 of the SMC, or imposed as a condition of any encroachment permit issued to GRANTEES.

SECTION 10. INSURANCE. CITY requires GRANTEES to maintain insurance requirements on the City's electronic insurance verification system. GRANTEES shall procure and maintain, at its own expense during the life of this Agreement, policies of insurance as specified in Exhibit "A" attached and incorporated herein by reference and shall provide all certificates and endorsements as specified in Exhibit "A" electronically for approval by the CITY Risk Manager prior to GRANTEES (or subcontractor) commencing any work under this Agreement.

SECTION 11. INDEMNIFICATION. To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless Licensor, its officers, officials, agents, representatives and employees from and against all claims, losses, damages and expenses including attorney fees, costs of litigation and judgment, directly or indirectly arising out of, or in connection with, or claiming to arise from any injury to any person(s), damage to any property, or any economic loss, arising out of, in whole or in part, (1) by any negligent act or omission of the Licensee; (2) by the Licensee's performance or non-performance of its duties under this License Agreement; (3) any defect in any services provided by the Licensee. This duty to defend, indemnify, and hold harmless shall include the Licensee's responsibility for any and all foregoing claims, even if such claims are groundless, false, and fraudulent and any and all equitable relief, damages, costs and attorney fees except those caused by the sole negligence, or willful misconduct of the Licensor. The defense and indemnification obligations of this License

Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this License Agreement. Licensee's responsibility for such defense and indemnity obligations shall survive the termination or completion of this License Agreement.

SECTION 12. CITY AUDIT OF FISCAL RECORDS. GRANTEES shall permit such examinations of their records by CITY as are necessary and material to the determination of the performance of the franchise obligations.

SECTION 13. PURCHASE OR CONDEMNATION BY CITY. There is hereby reserved to the CITY the right to acquire the property of the GRANTEES utilized in the performance of this franchise, by purchase or through the exercise of the right of eminent domain, in accordance with the conditions set forth in Section 1605 of the Charter, and applicable state law.

SECTION 14. ACCEPTANCE OF FRANCHISE TERMS AND CONDITIONS. By accepting this franchise, the GRANTEES covenant and agree to perform and be bound by each and all of the terms and conditions imposed by the Charter, all applicable requirements of the SMC, including, but not limited to Chapter 15.12, and Chapter 13.08, all applicable state, federal, and local laws, and the Franchise.

IN WITNESS WHEREOF, City and Grantee have executed this Franchise Agreement as of the date and year first written above.

"GRANTEES"

AIR PRODUCTS AND CHEMICALS INC

By: _____
Title: _____

Date: _____

AIR PRODUCTS MANUFACTURING
CORPORATION

By: _____
Title: _____

Date: _____

"CITY"

CITY OF SUNNYVALE, California
a Municipal Corporation

By: _____
Title: City Manager

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

INSURANCE REQUIREMENTS

GRANTEES shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by GRANTEES, their agents, representatives, or employees.

Minimum Scope and Limits of Insurance. GRANTEES shall maintain limits not less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form shall be at least as broad as CG 0001.
2. **Automobile Liability:** coverage with a combined single limit of not less than \$5,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this contract for bodily injury and property damage. ISO Form shall be at least as broad as CA 0001.
3. **Workers' Compensation:** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☐ **Pollution Liability coverage** with limits not less than \$2,000,000 per occurrence.
- ☐ **MCS-90 Endorsement** to Business Automobile insurance for transportation of hazardous materials and pollutants.

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and reviewed by the City of Sunnyvale, Risk Manager. GRANTEES shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention. Policies containing any self-insured retention provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the Named Insured or the City.

The aforementioned insurance requirements can be met through any combination of self-insured, primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.

Other Insurance Provisions:

1. During the term of the contract, the City of Sunnyvale, its officers, officials, employees, agents, and volunteers are to be covered as an additional insured in GRANTEES commercial general liability policy (and if industry specific coverage box is indicated above, pollution liability policy) with respect to liability arising out of activities performed

by or on behalf of GRANTEES; products and completed operations of GRANTEES; premises owned, occupied or used by GRANTEES. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers.

Additional Insured Endorsement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38 and completed operations shall be at least as broad as ISO CG 20 37 scheduled or automatic ISO CG 20 40.

2. During the term of the contract, GRANTEES Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale.
3. For any claims related to this project, GRANTEES insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of GRANTEES insurance and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.
4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
5. GRANTEES insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by email to riskmanagement@sunnyvale.ca.gov, has been given to the City.
7. Any umbrella or excess Insurance Liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of City (if agreed to in a written contract or agreement) until all coverage carried by or available to GRANTEES primary and excess liability policies are exhausted and before the City's own Insurance or self-insurance shall be called upon to contribute to a loss.
8. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce GRANTEES' policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured and also available to the Additional Insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than Superior or Excellent, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City of Sunnyvale's Risk Manager.

Verification of Coverage:

City utilizes an electronic insurance verification system to track and verify all insurance related documents. City is no longer accepting insurance documents by mail and will only accept electronic insurance documents. City will email GRANTEES requesting proof of insurance for this Agreement through an electronic insurance verification system, which includes instructions on how to upload insurance documents electronically. GRANTEES shall furnish the City with an electronic Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf and name City of Sunnyvale, Attn: Risk Management, 456 W. Olive Ave, Sunnyvale, CA 94088 as the certificate holder. All certificates are to be received and approved by the City, Risk Manager prior to commencement of work.

GRANTEES shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. GRANTEES shall submit insurance certificates, reflecting the policy renewals through the City's electronic insurance verification system. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors

GRANTEES shall require all subcontractors to procure and maintain insurance policies subject to these requirements. Failure of GRANTEES to verify existence of subcontractor's insurance shall not relieve GRANTEES from any claim arising from subcontractors work on behalf of GRANTEES.