



City of Chicago



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Office of the City Clerk

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Meeting Date: 5/8/2013

Sponsor(s): Mendoza, Susana A. (Clerk)

Type: Communication

Title: Utility agreement between City of Chicago, Acting through its Chicago Department of Aviation and The Peoples Gas Light and Coke Company Regarding O'Hare Modernization Program at Chicago O'Hare International Airport

Committee(s) Assignment:



CHICAGO DEPARTMENT OF AVIATION
CITY OF CHICAGO

April 23, 2013

The Honorable Susana Mendoza
Office of the City Clerk
121 North LaSalle Street, Room 107
Chicago, Illinois 60602

Subject: The Chicago Department of Aviation/O'Hare Modernization Program
Agreement with Peoples Gas Light and Coke Company

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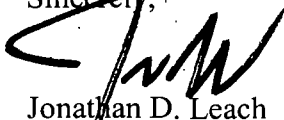
Dear Ms. Mendoza:

Transmitted herewith is a copy of the following document:

- Utility Agreement between the City of Chicago, Acting through its Chicago Department of Aviation and The Peoples Gas Light and Coke Company

This agreement was executed by the Commissioner of the Chicago Department of Aviation and is being forwarded to you pursuant to all applicable ordinances. Please put this document on file in your office and make it available to members of the public who wish to review it in accordance with your customary practices.

Sincerely,


Jonathan D. Leach
General Counsel

Enclosures:

1. Utility Agreement between the City of Chicago, Acting through its Chicago Department of Aviation and The Peoples Gas Light and Coke Company

cc: Document Control

UTILITY AGREEMENT BETWEEN THE CITY OF CHICAGO,
ACTING THROUGH ITS CHICAGO DEPARTMENT OF AVIATION,

AND

THE PEOPLES GAS LIGHT AND COKE COMPANY
REGARDING THE O'HARE MODERNIZATION PROGRAM ("OMP")
AT CHICAGO O'HARE INTERNATIONAL AIRPORT

THIS UTILITY AGREEMENT ("Agreement") is made and entered into this 4th day of April, 2013 ("Effective Date") by and between the **City of Chicago**, acting through its **Chicago Department of Aviation ("CDA")**, having an office at 10510 W. Zemke Rd. and phone number (773) 686-8060, (hereinafter referred to as "City" or "Customer") and **The Peoples Gas Light and Coke Company**, an Illinois corporation, having its principal place of business at 130 E. Randolph Drive, Chicago, Illinois 60601 (hereinafter referred to as "Company"), the City and Company being collectively the "Parties".

WITNESSETH:

WHEREAS, Customer is the owner of certain premises in the Counties of Cook and DuPage and State of Illinois, generally described as follows (the "Premises" or "Airport"):

Chicago O'Hare International Airport, Chicago, Illinois 60666

WHEREAS, the City has the authority to grant rights and privileges with respect to the Premises; and

WHEREAS, in an ordinance adopted by the City Council of the City of Chicago on September 1, 2004, (C.J.P. p 29893 et seq.) titled "Authorization for Execution of Agreements with Various Entities for Implementation of the O'Hare Modernization

Program” (the “2004 Ordinance”), the City Council authorized the OMP Executive Director, whose authority was later merged with the Commissioner of Aviation (“Commissioner”) to enter into ancillary agreements with utility companies to support the OMP; and

WHEREAS, Customer wishes to obtain additional gas supply infrastructure and/or modification of existing gas supply infrastructure for certain improvements being constructed on said Premises as part of the OMP, and for this purpose has requested or will request that the Company undertake such various gas supply infrastructure projects, a preliminary list of which is attached as Exhibit A, which Exhibit A may be amended from time to time by mutual agreement of the Parties (“OMP Projects”);

NOW, THEREFORE, for and in consideration of continued cooperation between the Parties to complete the OMP Projects, and the mutual covenants and agreements herein contained and other valuable consideration, the Parties hereto covenant and agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated by reference as if fully set forth herein.

2. Coordination of Services. The Parties agree to meet as required to: to refine OMP Project scopes of services, schedules and develop detailed pricing estimates for the OMP Projects; discuss the status of outstanding or on-going “action items”; and update construction schedules, manpower requirements, billing and budgets for the OMP Projects. Work will be coordinated and monitored by the City’s OMP program management office (“PMO”) and construction manager (“CM”), but the PMO and CM do not have authority to grant any approval required from the City or Commissioner.

3. Approvals. The CDA Commissioner’s approval of any Notice to Proceed is required prior to Company undertaking work. The CDA Commissioner’s approval of final budgets and invoices for work completed or to be completed is required before the

City is obligated to pay for such work. The City and Company agree that the Company shall not begin any work until the City has paid the Company for the cost of the work to be completed.

4. Duration of Agreement; Renewal. For the period from Effective Date to final completion of the OMP Projects ("Expiration Date"), the Company's contractors, invitees, licensees and agent may enter upon the Premises, or any portion thereof, as may be reasonably necessary in order to for Company to complete its work on the OMP Projects.

6. Company Invoices and Payments. Company shall submit invoices providing the estimated cost of each OMP Project, as an OMP Project is scheduled or the City provides Company a Notice to Proceed, to the reasonable satisfaction of the City, or as otherwise agreed to by the Parties in writing. Invoices are subject to approval by the CDA Commissioner and payment will be made to Company within sixty (60) days after Company submits an invoice, unless the City disputes a charge in good faith. Company will not commence any OMP Project prior to receipt of Customer's payment. Upon completion of each OMP Project, the Company shall prepare a report of the actual cost for each OMP Project. If the difference between the final cost and the estimated cost varies by more than five (5%) percent, Company shall submit the report to the City. If the variance is in favor of the City, the Company shall provide payment to the City within sixty (60) days of transmitting the report to the City, or take a credit against a pending or future OMP Project or a variance that the City may owe the Company. If the variance is in favor of the Company, the City shall provide payment to the Company within sixty (60) days of receipt of the report. The Company shall have the right to cancel any OMP Project not started at anytime that the City is in arrears in a payment to the Company.

7. Easements. The City hereby reserves the rights and such easements as may be necessary to enter onto those portions of the Premises where Company is performing work for the purpose of conducting any operations related to the function of the Airport, to verify the Company's compliance with this Agreement, and to inspect or observe

testing on any part of Company's work on the Premises. As the Company's work and facilities concern the installation and operation of live natural gas facilities, the City understands and agrees that it shall not come into contact with or in any way modify, affect or tamper with the Company's work or facilities. City agrees to use reasonable efforts not to interfere with Company's performance of work on the Premises and will provide 24 hours notice of any necessary entry, except in the case of an emergency.

8. Access to Other Airport Property. Subject to rules and regulations governing the conduct and operations of the Airport promulgated by the Commissioner from time to time ("Airport Rules and Regulations"), Company will have the right and privilege of access to Airport property for purposes: (i) of ingress to and egress from the Premises where work is to be performed by it and its employees, contractors, licensees, invitees and agents and their respective equipment, vehicles, machinery and (ii) of providing transportation of their respective employees, contractors, licensees, invitees and agents, to, from, and within the Premises. Except in an emergency or with City permission, in no event may Company block or otherwise obstruct a runway, taxiway, or service road at any time or in any manner which will impair or adversely affect the use or operation of said runway, taxiway or service road areas by airlines, City or other airport users.

9. Insurance. Company must comply with the insurance requirements set forth in Exhibit B, attached hereto and incorporated by reference.

10. Indemnity and Release.

(a) Company must indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all of the following Losses:

- (i) injury, death or damage of or to any person or property;
- (ii) any infringement or violation of any property right (including any patent, trademark or copyright); and

(iii) "Losses" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Company's activities under and pursuant to this Agreement, except to the extent that such liabilities have been caused by the negligence or willful misconduct of the City, its officers, representatives, agents, contractors, elected and appointed officials, and employees. The foregoing exclusion from Company's indemnity duty under this Paragraph 10 supersedes any other language to the contrary in this Agreement, including the Company's insurance duties under Exhibit B.

(b) This indemnification provision shall survive the expiration of the Agreement (or subsequent extension) or earlier termination of this Agreement.

11. Confidentiality. Except as required by law, including requirements of the Illinois Freedom of Information Act, neither Party shall issue publicity news releases, grant press interviews, or disseminate any information regarding the Premises or its intentions therewith without the prior written consent of the other Party. In the event that either Party is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data, or documents of the other Party which may be in the other Party's possession by reason of this Agreement, the Party presented with the request shall, to the extent permissible by law and to the extent not prohibited by the terms of a subpoena, immediately give notice to the other Party (and if the Customer, to the Corporation Counsel of the City), with the understanding that each Party shall have the opportunity to contest such process by any means available to it before such records or documents are submitted to a court or other third party, provided, however, that neither party shall be obligated to withhold such delivery beyond that time

as may be requested by a court, any governmental agency, or administrative agency of competent jurisdiction, unless the subpoena or request is quashed or the time to produce is otherwise extended.

12. Compliance with all Laws. Company, at its sole expense, must obtain all necessary permits and authority from governmental entities and agencies and comply with all applicable federal, state and local laws and regulations with respect to any entry onto the Premises and conducting any business thereon or performing work related to this Agreement thereon. Chicago Department of Aviation will support the Company in its application for any permits issued by another department of the City.

13. Compliance with Airport Security Laws. This Agreement is expressly subject to 49 U.S.C. 44901 et seq., as amended from time to time ("Airport Security Laws"), the provisions of which are hereby incorporated by reference, and all rules and regulations promulgated thereunder. Company shall, notwithstanding anything contained herein to the contrary, at no additional cost to City, perform under this Agreement and in compliance with those guidelines developed by City, the Transportation Security Administration ("TSA"), and the Federal Aviation Administration ("FAA") pursuant to the Airport Security Laws and associated rules and regulations. Without limiting the foregoing, Company shall observe and obey all rules and regulations governing the conduct and operation of the Airport promulgated from time to time by City, County, State or Federal Authorities and, in particular, Company agrees at all times to comply with any master security plan and procedures for the Airport as may be established by City from time to time.

14. Airport Security Badges. Company must obtain from the airport badging office Airport Security Badges for any person working in secured areas at the Airport on Company's behalf. No person will be allowed beyond security checkpoints without a valid Airport Security Badge. Each such person must submit signed and properly completed application forms to receive an Airport Security Badge. Additional forms and tests may be required to obtain Airport Driver's Licenses and Vehicle Permits. The

application forms will solicit such information as the Commissioner may require in her discretion, including but not limited to name, address, date of birth (and for vehicles, driver's license and appropriate stickers). Company is responsible for requesting and completing the form for each person who will be working at the Airport on Company's behalf and all vehicles to be used on the job site. Upon signed approval of the application by the Commissioner or his designee, the employee will be required to attend a presentation regarding airport security and have his or her photo taken for the badge. The Commissioner may grant or deny the application in his/her sole discretion. If the Commissioner denies the application and the Company requests reconsideration, the Company must make available to the Commissioner, upon request, relevant information concerning the person whose application was denied.

In order for a person to have an Airport Security Badge, a criminal history record check ("CHRC") conducted by the Department of Aviation will also be required. The CHRC will typically include a fingerprint analysis by the Federal Bureau of Investigation and such other procedures as may be required by the TSA. Airport Security Badges, Vehicle Permits and Driver's Licenses will only be issued based upon properly completed application forms. All individuals who have been issued an Airport Security Badge must wear and display their Airport Security Badge on their outer apparel at all times while at the Airport. Persons or vehicles without proper credentials may be removed from the secured area and may be subject to fine or arrest.

15. Compliance with Other Agreements. The Agreement is not intended to supersede any obligations of the Parties under any other agreement between them. Rather, this Agreement is intended only to set forth the obligations of Company and City with respect to the OMP Project work being performed on the Premises.

16. City's Approval. Except as expressly stated otherwise, whenever City's approval, consent, or determination is required under this Agreement, the City may withhold its approval or consent in its sole discretion, and all such approvals, consents, and any determinations or directives to be made by the City will be made by the

Commissioner; provided, however, that Company shall have no duty to perform any work under this Agreement if the Customer withholds its consent or approval of any portion of the applicable scope of work or undisputed payment obligation. Nothing contained in this Agreement impairs the right of City in the exercise of its governmental functions as a municipality. No official, employee or agent of the City will be held personally liable for any damages, expenses or costs that the Company incurs in connection with the City's performance or non-performance under this Agreement, except to the extent the City has indemnified the Company under Paragraph 10.

17. Applicable Law. This Agreement will be construed in accordance with the laws of the State of Illinois.

18. Severability. If any provision of this Agreement is deemed to be unenforceable by any court of competent jurisdiction, it shall not affect the enforceability of any other provision of this Agreement.

19. Modifications and Amendments. Any modifications or amendments to this Agreement must be in writing and bear the signatures of authorized representatives of the City and Company.

20. Entire Agreement. This Agreement and the Exhibits attached hereto and incorporated by reference, shall constitute the entire agreement between the parties as to the subject matter hereof and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein.

21. Headings. The section and paragraph headings of this Agreement are for convenience only and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

22. Binding Effect. This Agreement shall be binding upon the parties hereto and their heirs, administrators, successors and assigns, where applicable.

23. Company Authority. Company represents that the signatures of each person signing on its behalf is made with complete and full authority to commit it to every term and condition of this Agreement, including every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein. Customer represents that the signatures of each person signing on behalf of the City is made with complete and full authority to commit the Customer to every term and condition of this Agreement, including every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein.

24. Counterparts. This Agreement may be executed in any number of counterparts with the same force and effect as if all signatures were appended to one document, each of which shall be deemed an original. Counterparts may be executed in either original or electronically transmitted form (e.g., facsimile or portable document format).

25. Notices and Consents. All consents and approvals shall be in writing. All notices and other communications in connection with this Agreement, except operational notices contemplated by this Agreement, shall be in writing and be sent by registered or certified mail, postage prepaid and addressed as follows:

If to Company: The Peoples Gas Light and Coke Company
 Attn: Legal and Governance Services
 130 E. Randolph Street
 Chicago, IL 60601

If to Customer: City of Chicago, Department of Aviation
Attn: Commissioner
10510 W. Zemke Road
Chicago, IL 60666

With a copy to: City of Chicago, Department of Law
Attn: Deputy Corporation Counsel, Aviation
30 N. LaSalle Street, Suite 1400
Chicago, IL 60602

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
as of the Effective Date.

Customer

City of Chicago, acting through its
Chicago Department of Aviation

By: Rosemarie S. Andolino

Name: Rosemarie S. Andolino

Title: Commissioner

Company

The Peoples Gas Light and Coke Company

By: Willard S. Evans, Jr.

Name: Willard S. Evans, Jr.

Title: President

Exhibit A

NORTH AIRFIELD PROJECT DEFINITION	
Project Number	Scope of Work
PN-107	Reroute existing gas main in conflict with proposed stock piles. Stock piles are needed to store earth removed from expansion of north detention basin. Proposed location for stock piles is one on the north side of Schlitz Rd and one on the south side of Schlitz Rd.

SOUTH AIRFIELD PROJECT DEFINITION	
Project Number	Scope of Work
PS-100	Reroute Gas Main service the Post Office building
PS-102	Reroute existing Gas Main along north side of proposed Runway 10R-28L to allow the construction of proposed Runway 10R-28L. The existing Gas Main is in the safety area of proposed Taxiway R and is in part too shallow and in parts it will exceed the maximum depth per Peoples Gas standards.
PS-104	Reroute existing 8" gas main in conflict with proposed runway 10R-2BL grading along the south side of South Basin. The existing gas main is too shallow and will not have the minimum cover per Peoples Gas standards.
PS-106	New gas service to proposed South Airport Traffic Control Tower
PS-107	Reroute existing 4" gas main in conflict with proposed Taxiway LL.

Exhibit B

CONTRACT INSURANCE REQUIREMENTS

OMP

Company

Company or its contractors must provide and maintain at Company's or its contractor's own expense, until Agreement completion and during the time period following final completion if Company or its contractors is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring all work related to the Agreement.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$500,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (maintained for a minimum of 2 (two) years following final completion), explosion, collapse, underground, separation of insureds, defense and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City of Chicago is to be named as an additional insured and others as reasonably required by the City on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Company or its contractors must provide Automobile Liability Insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured and others as reasonably required by the City on a primary, non-contributory basis.

4) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Company or its contractors must provide, with respect to the operations that Company or its contractors performs, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than

\$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

5) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage shall include contractual liability for liability of others including the City of Chicago assumed under any written contract or agreement for breach of professional services or duty caused by or on behalf of Company or its contractors. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6) Contractor's Pollution Liability

When any work is performed which may cause a pollution exposure, Contractor's Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Agreement scope of services with limits of not less than \$5,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

7) Property

Company or its contractors is responsible for all loss or damage to City property at full replacement cost.

Company or its contractors is responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by Company or its contractors or any contractor or subcontractor.

B. ADDITIONAL REQUIREMENTS

Company or its contractors must furnish the City of Chicago, O'Hare Modernization Program, 10510 West Zemke Road, 60666, Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Company or its contractors must submit evidence of insurance on a standard Accord certificate form or equivalent prior to Agreement award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence

from Company or its contractors is not a waiver by the City of any requirements for Company or its contractors to obtain and maintain the specified coverages. Company or its contractors shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Company or its contractors of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance must provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Company or its contractors.

Company or its contractors hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Company or its contractors in no way limit Company or its contractors' liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by Company or its contractors under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Company or its contractors are a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Company or its contractors must require all contractors or subcontractors to provide the insurance required herein, or Company or its contractors may provide the coverages for the contractors or subcontractors. All contractors or subcontractors are subject to the same insurance requirements of Company or its contractors unless otherwise specified in this Contract.

If Company or its contractors desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to reasonably modify, delete, alter or change these requirements.