

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO ONE GAS, INC, ACTING BY AND THROUGH ITS TEXAS GAS SERVICE COMPANY DIVISION, AND ITS SUCCESSORS AND ASSIGNS FOR A PERIOD OF TEN YEARS FROM APPROVAL AND ACCEPTANCE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC RIGHTS-OF-WAY AND PUBLIC EASEMENTS; AND REPEALING ORDINANCE NO. 20061005-023.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The Council grants a franchise to Texas Gas Service Company, a division of ONE Gas, Inc., and its legal representatives, successors, lessees, and assigns, under the following terms and conditions:

SECTION 1. Definitions.

1.1. For the purpose of this Ordinance the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning.

1.2. “Austin Water Wildlands” shall mean and include all water quality protection lands and preserve lands, including but not limited to the Balcones Canyonland Preserve and Water Quality Protection Lands.

1.3. “City” shall mean the City of Austin, Texas, a home rule municipal corporation in the State of Texas.

1.4. “City Parks” shall mean and include all areas dedicated or used as a public park, recreation area, scientific area, wildlife refuge, or historic site.

1.5. “Company” shall mean Texas Gas Service Company, a division of ONE Gas, Inc., a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, authorized to transact and actually transacting business in the State of Texas, its legal representatives, successors, lessees, and assigns.

1.6. “Consumer” shall mean any person or organization within the corporate

limits of the City of Austin receiving and using gas from the Company for his or her own appliances or equipment, whether or not the gas is billed directly to him or her, or to a second party. (For example, in the case of a rental unit where the utilities are part of the rent, the landlord is a Customer and the tenant is a Consumer.)

1.7. “Corporate limits” shall mean all areas lying within the City limits and full purpose annexed adjacent areas, as they may change from time to time.

1.8. “Council” shall mean the governing body of the City of Austin.

1.9. “Customer” shall mean any natural person, corporation, partnership, firm, association or unincorporated association, trust, municipality, public or private entity or other legally recognized entity, whether for-profit or not-for-profit, located within the municipal corporate limits of the City and serviced by the Company with the sale or transportation of natural gas through any use of the Public Right-of-Way.

1.10. “Developer Incentives” shall mean any amounts paid to developers by the Company that are not Developer Infrastructure Costs.

1.11. “Developer Infrastructure Costs” shall mean any reasonable amounts paid to developers by the Company for installation of infrastructure necessary to providing natural gas service, reasonable costs related to acquiring necessary rights-of-way, and reasonable costs related to the management of facility installation activities.

1.12. “Director of Public Works” shall mean the Director of the Austin Transportation and Public Works Department, or successor in function.

1.13. “Distribution System,” or “Austin Distribution System” shall mean, in its entirety, all pipes, equipment and other appurtenances and any portion thereof, used or necessary for the transporting and delivery of gas by the Company to Customers and Consumers within the corporate limits of the City.

1.14. “Emergency” is defined as sudden and unforeseeable damage or malfunction of a portion of the Company’s Austin Distribution System that is potentially a threat to life, health, or property.

1.15. “End user” is defined as an individual or business, other than a business that generates electricity for resale to wholesale or retail customers, that consumes natural gas during the pursuit of its private or commercial purposes.

1.16. “Franchise” or “Franchise Ordinance” shall mean this Ordinance, and all rights and obligations established herein.

1.17. “Franchise Fee(s)” shall mean the sum of fees to be paid to the City by the Company as defined in Section 12 of this Ordinance.

1.18. “Gas” shall mean natural gas and any synthetic gas distributed by the Company through its Distribution System.

1.19. “Gross Revenues” shall mean all revenue derived or received, directly or indirectly, from the sale of gas to all classes of Customers and Consumers (excluding gas sold to another gas utility in the City for resale to its customers within the City and the gross revenues from gas sold to the City for its own use) within the corporate limits of the City.

(A) “Gross Revenues” shall include:

(1) revenues derived from the following miscellaneous charges:

(a) charges to connect, disconnect, or reconnect gas within the City;

(b) charges to handle returned checks from Consumers within the City;

(c) such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City;

(2) gross receipts from gas sales and gross receipts from gas transportation within the City;

(3) amounts collected for State gross receipts tax;

(4) all revenues derived or received by the Company from the transportation of Transport Gas through the Company’s Distribution System within the City to End users located within the City (excluding any gas transported to another gas utility in the City for resale to its customers within City);

(5) the value of Transport Gas transported by the Company for Transport Customers, through the System of the Company located in the City’s Public Rights-of-Way (“Third Party Sales”) (excluding the value of any gas transported to another gas utility in the City for resale to its customers within the City), with the value of such gas to be established by utilizing either the purchase price (\$/MMbtu) of the Transport Gas as reported to the Company by its Transport customers or a price equal

to the Houston Ship Channel Index of prices (\$/MMbtu) for large packages of gas published each month in Inside FERC's Gas Market (or a successor publication or another publication agreed upon by the City and Company) as reasonably near the time that the transportation service is performed; and

(6) receipts from sales of materials, appliances, or equipment.

(B) "Gross revenues" shall not include:

(1) the revenue of any person including, without limitation, an Affiliate, to the extent that such revenue is also included in Gross Revenues of the Company;

(2) sales taxes;

(3) any interest income earned by the Company;

(4) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's Public Rights-of-Way;

(5) receipts for maintenance of appliances, machinery, or equipment;

(6) receipts for compensation for damage to the Company's property;

(7) contributions in aid of construction;

(8) revenues billed but not ultimately collected or received by the Company; and

(9) receipts from any non-regulated utility or non-regulated services or products.

(C) Securitization charges or other similar temporary or special rates or charges authorized by the State of Texas, including Customer Rate Relief Charges and any future charges recovered through state-approved bond issuances, are regulatory pass-through items governed exclusively by state law and Railroad Commission of Texas order. Accordingly, such securitization charges shall not be subject to any Franchise Fee, program surcharge, City-imposed fee, or other charge under this Franchise, nor shall they be included within Gross Revenues for Franchise Fee purposes.

1.19 "Public Easement" shall mean those public easements held, owned, or

controlled by the City, excluding those which are located in City Parks, Austin Water Wildlands, or other conservation land, the terms, conditions, or limitations upon which expressly allow the construction or maintenance of a natural gas distribution system.

1.20 “Public Right(s)-of-Way” shall mean present and future Streets, avenues, boulevards, parkways, lanes, Alleys, bridges, highways, and public thoroughfares, if allowed by law, within the municipal corporate limits of the City, as they now exist or may be, hereafter, constructed, opened, laid out or extended within the present limits of the City or in such territory as may, hereafter, be added to, consolidated, or annexed to the City, but only those Public Rights-of-Way that have been dedicated to and accepted by the City. City Parks are not included in this definition.

1.21 “Service Line” shall mean lines connected at or nearly at right angles to the Company’s mains and used to convey gas therefrom to the property line of Customers and/or Consumers.

1.22 “Street” or “Alley” shall mean a publicly dedicated or maintained right-of-way, a portion of which is open to use by the public for vehicular travel.

1.23 “Transport Gas” or “transported gas” shall mean gas owned or controlled by a user or its designee (i.e., gas that is purchased or otherwise acquired by an End user from someone other than the Company) and delivered by such user or its designee to the Company at a point on the Company’s Distribution System, such point of delivery to be defined by the Company, and carried, delivered or transported through the Company’s system at a point of redelivery in the City by the Company to the user, for a fee. The terms and conditions of the transportation arrangement, including but not limited to the delivery point(s) of redelivery, measurement and location of title transfer, shall be as set forth in the contract entered into between the Company and the End user and/or the Company’s transportation tariffs on file with the Railroad Commission of Texas or other appropriate regulatory authority.

1.24 “Unmetered Gas” shall mean that gas being moved under pressure from the Company’s main lines to the Customers’ and/or Consumers’ meter.

SECTION 2. Granting of Franchise.

2.1. The City hereby grants to the Company a non-exclusive Franchise to maintain, construct, equip, extend, alter and otherwise establish and operate in the City, as now or hereafter constituted, works, systems, plants, lines and all related facilities (including those now in service) necessary or appropriate to sell,

manufacture and store, distribute, transport, convey or otherwise conduct, serve, supply and furnish the inhabitants of the City and others, and to the City, whenever the City may desire to contract therefore, gas for light, fuel, power, heat and any and all other useful purposes, and the Company is hereby granted passage, right-of-way in, under, along and across, the right to occupy and use in any and all lawful way during the life of this Franchise any and all Public Rights-of-Way and Public Easements, now or may hereafter exist, and lawful purpose as herein mentioned. Nothing in this Franchise shall grant the Company the right to use or operate a gas distribution system owned by the City, absent a separate license agreement supported by independent consideration.

2.2. The Company shall be allowed to continue to operate, repair and maintain all lines existing on the effective date of this Franchise within currently designated City Parks, Austin Water Wildlands and conservation lands, or hereinafter within areas formally designated as a City Park, Austin Water Wildland or City of Austin conservation land but shall not undertake a major replacement of such lines or lay new lines within said City Park, Austin Water Wildland or City of Austin conservation land.

2.3. The construction, maintenance, and operation of the Company's Distribution System and property of the Company subject to this Franchise shall be subject to ordinances and regulations passed or approved by the City Council, including without limitation Title 14 – Use of Streets and Public Property, as amended, to the extent that such ordinances and regulations are not in conflict with the laws of the United States, the State of Texas, or the orders, rules or regulations of the Railroad Commission of Texas or other regulatory authority where such authorities have pre-emptive jurisdiction over the subject matter of such City ordinances or regulations.

2.4. The term of this Franchise shall expire ten years from the effective date of this Franchise Ordinance and shall include any period between October 16, 2026, and the effective date. Company shall provide written notice of the expiration of this Franchise Ordinance to Austin Financial Services (or successor in function) and the Director of Public Works no later than one year prior to the expiration of this Franchise Ordinance.

2.5. (A) The Company shall not transfer this Franchise, including as part of a sale of stock or assets involving the Company and some or all of its divisions and subsidiaries, without the written approval of the Council expressed by ordinance, and such approval shall not be unreasonably withheld.

(1) Council may revoke this Franchise if the Company sells, transfers,

conveys, or otherwise disposes of its rights or interests under this Franchise, or attempts to do so, without the Council's prior written consent. All rights and interests of the Company shall cease if this Franchise is revoked pursuant to this provision.

(2) A transfer in violation of this section is void.

(3) The Company may not assign this Franchise to evade fee payment.

(B) Nothing in this Franchise may be construed to grant, renew, extend, or amend by estoppel or indirection any right, franchise or easement affecting the Public Rights-of-Way, public places, or other real property. Only Council shall have the power by ordinance to grant, renew, and extend a franchise to all service providers placing or installing facilities or equipment in, on or over the Public Right-of-Way and of all public utilities of every character operating within the City, and with the consent of the franchise holder. In consideration of the foregoing, and the authority of the City to impose reasonable regulations to ensure safe, efficient, and continuous service to the public, the City and the Company have established the following procedures regarding sale of the Distribution System and transfer of the Franchise:

- (1) In the event the Company expresses its intent by letter or contract to sell its Distribution System located within the City, separate and apart from other assets of the Company, then the City may, within 60 days of receiving such notice, provide notice to the Company of its intent to exercise its option to commence purchasing the Company's Austin Distribution System in the manner provided in Section 19 of this Franchise. When the City has completed its purchase of the Company's Austin Distribution System, the Company shall be released from its obligations or liabilities under this Franchise.
- (2) If the City does not elect to exercise its option to commence purchasing the Company's Austin Distribution System under Section 19 of this Franchise, then the City shall commence an investigation to determine if the Franchise should be transferred to the entity to whom the Company intends to sell the Austin Distribution System. The City's investigation of the proposed purchaser must be completed within 30 days from the date of receipt of notice from the Company. The Company shall provide the City with any public information about the proposed purchaser of its Distribution System that is within its possession, and that it may legally provide, within seven consecutive days of a written request from the

City. Following completion of the investigation and the City's determination of its desire to approve the transfer of the franchise to the proposed purchaser, the City shall approve such transfer by ordinance, under the same terms and conditions as this Franchise, within a time period consistent with the requirements of the City Charter. Approval of the transfer of this Franchise shall not be unreasonably withheld. The Company shall be released from its obligations or liabilities under this Franchise upon the transfer thereof to the new franchisee.

- (3) In the event the City determines, for good cause, that it will not approve the transfer of this Franchise to the proposed purchaser of the Austin Distribution System, then the City must set forth its reasons for not approving the transfer, and the Company shall not be released from its obligations or liabilities under this Franchise until such time as the City makes a determination not to extend or transfer the Franchise to a new franchisee. When the City makes its decision not to extend or to transfer the Franchise to the purchaser of the Company's Austin Distribution System, the City will immediately begin negotiations with the Company and the purchaser in an effort to address, in a timely manner, the City's reasons for not extending the Franchise.
- (4) Nothing in this Franchise shall be construed to limit the City's right to reasonably refuse to transfer or extend the Franchise to the proposed purchaser.

2.6. The separation of the utility and non-utility properties of the Company into separate business organizations shall not operate to trigger the requirements of this section.

SECTION 3. Acceptance by Company.

3.1. This Franchise shall be accepted by the Company in writing, which acceptance shall be filed with the City within 60 days after the passage of this Ordinance by Council, and when so accepted, this Ordinance shall be a contract duly executed by and between the City and the Company.

3.2. The City, by the granting of this Franchise, does not surrender or to any extent lose, waive, imperil or lessen the lawful powers and rights now or hereinafter vested in the City under the Constitution and Statutes of the State of Texas and under the Charter of the City to regulate the rates, operations, and services of the Company; and the Company, by its acceptance of this Franchise, agrees that all such lawful

regulatory power and rights as the same may from time to time be vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time and from time to time.

SECTION 4. Service.

4.1. Service shall be provided by means of the use of the Public Rights-of-Way and Public Easements. If additional Public Easements are necessary, they shall be the responsibility of the property owner requesting such service. All future Company facilities within the Public Rights-of-Way shall be located in a space designated by the City. The Company shall not place its facilities where the same will interfere with any existing cable television, electric, water, street lights, fire lanes, or communications lines, or obstruct or hinder in any manner the various utilities serving the residents of the City.

4.2. The Company shall, as specified in its "Rules of Service," as are now, or as shall in the future be approved by Council, or other regulatory authority having jurisdiction, furnish service without unreasonable discrimination to all areas of the City. The Company shall not deny service, or otherwise discriminate against applicants for service, Customers, or Consumers on the basis of race, religion, national origin, sex, or sexual orientation. The Company, and its successors and assigns, shall have the right to adopt and enforce its Rules of Service hereunder not inconsistent with the law of this Franchise Ordinance.

4.3. The City may require the Company to maintain a Termination of Service Policy in its Rules of Service that is identical to or consistent with that applied to similarly situated City utility customers. The City shall, commensurate with approval of any such change in the Company's Rules of Service, provide for the recovery of the prospective cost impact associated with the change or changes.

4.4. The Company shall maintain its property and equipment in good order and condition consistent with the needs of the service to be rendered therefrom but may not be compelled to extend its facilities beyond the Consumer's property line. It is recognized that the Company shall retain full title in and right to its personal property whether or not same is incorporated in real estate. The Company shall, at its own cost and without expense to any of its Customers or prospective Customers wherever permanent improvements are located on the premises of such current or prospective Customer and/or Consumer, construct and maintain a Service Line of proper size and capacity from its main to the property line of each current or prospective Customer and/or Consumer. The Company shall in every instance install all necessary lines moving Unmetered Gas.

4.5. The Company's system and appurtenances shall be located, installed, and maintained so that, to the extent reasonably practicable, the facilities do not unreasonably interfere with any improvements the City may deem proper to make, or unnecessarily obstruct the free use of the Public Rights-of-Way, Public Easements, or public property.

4.6. Council may, in its discretion, pursuant to the authority of the City Charter, require a management audit of the Company's operations in the City. The costs of such audit shall be considered a reasonable and necessary expense for the Company's cost of service.

4.7. By January 1, 2029, the Company agrees to implement, based on a new tariff to be adopted by the City, a financial assistance program for income-qualified Customers and include a monthly charge on Customer bills dedicated to funding such program.

4.8. The Company shall attend at least two meetings of the Resource Management Commission (or successor board or commission) every calendar year.

4.9. Beginning in December 2026, the Company shall annually file with Austin Financial Services a report addressing the Company's expected capital improvements within the City for the upcoming year. The Company shall be solely responsible for identifying confidential or proprietary information in such annual reports. The City agrees to maintain the confidentiality of any confidential or proprietary information as designated by the Company to the extent allowed by law.

4.10. To improve public engagement and ensure transparent information flow between the Company and Customers, the Company shall organize and host no fewer than two public Customer meetings within 45 days of filing of an application for any proposed base rate increase or Interim Rate Adjustment (or "GRIP") applicable to Customers during the term of the Franchise Ordinance. Company shall issue public notice of such public Customer meetings to City staff and each individual Customer impacted by the proposed rate increase no later than 10 days before the meeting date. Company representatives must be present at each public Customer meeting to address Customer concerns and questions. The Company must provide information at each public Customer meeting to explain the cause(s) of the rate increase at issue.

SECTION 5. Use of Public Rights-of-Way and Public Easements.

5.1. 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 conflict with existing water pipes, sewers, electric power lines, telephone lines, cable television lines and other authorized installations, and provided that all work done in said Public Easements and Public Rights-of-Way by the Company shall be done with the utmost diligence and without unnecessary inconvenience to the public or individuals. Further, the Company's use of the foregoing shall be in accordance with all City Ordinances, the City's Standards Manual, and the City's Standard Specifications Manual, as amended.

5.2. The main lines of the Company shall be laid in Public Rights-of-Way and other Public Easements, and when in Streets, Alleys, and avenues, shall be laid parallel with the curb line thereof, or in such locations as shall be most practical. The Company's main lines shall be installed or replaced at depths which comply with all applicable state and federal rules and regulations establishing minimum safety standards for the design, construction, maintenance and operation of pipelines, provided, however, that from the effective date of this Agreement, in no case shall any new or relocated main line be laid less than 24 inches below the established street grade at the time of installation, without permission of the Director of Public Works.

5.3. When the Company shall desire to lay any mains or new Service Lines hereunder, and before commencing its construction work for mains or new Service Lines, it shall submit to the Director of Public Works or other proper authority an application for permit, and a map or plan showing the Public Rights-of-Way and other Public Easements wherein it proposes to construct its facilities. The Director of Public Works or other proper authority shall respond in writing to the Company within 10 calendar days of the Company's submission either approving or rejecting the plan and, if a rejection, listing the reasons for such rejection. Actual approval by the Director of Public Works or other proper authority shall constitute a permit to the Company for the opening of all of the Public Rights-of-Way and other public places shown on the map or plan, and for the construction or laying of the main lines and other facilities or equipment by the Company. The Company shall not be required to secure a permit in advance of excavation in the event of an Emergency, as defined herein, provided that the Company shall file with the Director of Public Works no later than 10 days after the last day of such an Emergency, the information that the Company would have been required to pre-file had there not been an Emergency and detailed information that describes the circumstances of said Emergency.

5.4. In furtherance of the public interest in safety, health, and public welfare and to facilitate the safe management of the Public Rights-of-Way, the construction,

expansion, reconstruction, excavation, use, maintenance and operation of the Company's Distribution System and property is subject to all generally applicable City requirements. In addition to any other City requirements, the Company shall provide the City's Office of Right of Way Management, or such other officials as the City may designate, construction plans and maps showing the routing of any new construction and construction plans, 45 days prior to the commencement of construction which involves an alteration to the surface or beneath the surface of the Public Right-of-Way, to the extent generally required. The Company shall not begin construction until the plans and drawings have been approved in writing by the Office of Right of Way Management; this approval shall not be unreasonably delayed. The Company shall participate in the Austin Utility Location Coordination Committee ("AULCC") meetings and coordinate new construction with the AULCC. The Company's facilities shall bear the identification marks established by the AULCC if the facilities are installed after the AULCC establishes identification marks.

5.5. The Company is responsible for excavation restoration and ongoing repairs. The Company must clearly mark all pavement cuts to distinguish the Company's work from other utilities in the Public Right-of-Way. Company excavation repairs and restoration of excavation sites in the Public Right-of-Way must comply with all requirements under the City's Code of Ordinances, the City's Standards Manual, and the City's Standard Specifications Manual in effect at the time of the applicable repair or restoration. The Company will work with City staff to identify and avoid placement of new infrastructure in the City's most environmentally sensitive locations, namely Austin Water Wildlands (including Balcones Canyonland Preserve lands and Water Quality Protection lands) and any other designated City Conservation lands. In the event the Company must construct infrastructure in the City's most environmentally sensitive areas, the Company must restore disturbed areas to pre-disturbance topography and native species.

5.6. Any damage to City-owned utility infrastructure that occurs as a result of the Company's operations in the Public Rights-of-Way or Public Easements shall be repaired solely at the Company's expense. If Company's operations within the Public Rights-of-Way damage or disrupt any existing traffic control devices on the pavement or curbside (including, but not limited to, lane lines, crosswalks, arrows, and traffic signage) or other assets (including, but not limited to, speed cushions/humps/tables, concrete medians/circulate intersections/crossings islands, curb extensions/bulb-outs, or bicycle/pedestrian facilities), the Company is responsible for restoring such markings and assets to pre-excavation conditions as soon as possible under the circumstances. The Company is responsible for denoting traffic control devices and assets within the extents of excavation on submitted plans, including City standard details for applicable traffic

control devices and assets, for the City's review and approval prior to the start of work. All temporary patches installed by the Company for compliance with the American Disabilities Act must receive a permanent replacement within 90 days from the date the Company installs the temporary patch.

5.7. If a meter is to be installed or relocated within the Public Right-of-Way or Public Easement, and where it is safe to do so, Company shall submit to the City aesthetics of the meter placement, when reasonable. In installation of all meters, Company must comply with the City's placement requirements. If the City requires a meter upgrade, the Company shall comply so long as the costs incurred by the Company to change the meter and/or associated piping or equipment are reasonable and do not exceed the cost of the Company's initial plan, in whole or in part, by 15 percent or more.

5.8. In the event of a conflict between the provisions of this Section 5 and those of City Code Chapter 14-11 or other ordinance of general applicability that regulates the use of the Public Right-of-Way, the provisions of the City Code shall govern.

SECTION 6. Work by the City and Others.

6.1 City reserves the right to lay, and permit to be laid, sewer, cable television, water, telephone and other pipelines, cables and conduits, and to perform and permit to be performed any underground or overhead work that may be necessary or proper in, across, along, over, or under any Public Right-of-Way, Public Easement, or public place occupied by the Company. The City shall comply with State law for work requiring excavation, including usage of the State-wide 811 system, and shall be liable to the Company only for any damage to the facilities of the Company if caused by the negligence of the City or its employees.

6.2 If the City requires the Company to adapt or conform its Distribution System, or in any way alter, relocate or change its property to enable any person, firm, corporation or entity (whether public or private), other than the City, to use the Public Rights-of-Way, the Company shall be entitled to reimbursement from the person, firm, corporation or entity desiring or occasioning such change for any and all loss, cost or expense occasioned thereby.

SECTION 7. Changes for Governmental Purposes.

7.1. If, during the period of this Franchise, the City shall elect to alter or change the grade or alignment of any City Public Right-of-Way or other Public Easement, or any water pipe, wastewater pipe, or any overhead or underground

structure within City Public Right-of-Way, so as to conflict with the facilities of the Company, the Company shall remove or relocate, as necessary, all of its facilities at its own expense. Schedules for this work shall be developed by designated representatives of the Company and the City. If such representatives cannot agree on the schedule, the Director of Public Works or his or her designee, after consultation with the Company, shall establish a schedule that allows for reasonable time for budgeting and resource allocation as well as incorporates City permitting times. This schedule shall provide for a minimum of 30 days to exist between the time the schedule is furnished to the Company and the time that any specific work to commence by the Company covered in the schedule is to begin. The Company's duty to relocate shall also apply to any abandoned facilities that are determined by the City to be inconsistent with water, sewer, drainage, traffic or pavement industry standard safe operating practices for existing facilities or determined by the Company to be inconsistent with gas distribution industry standard safe operating practices for existing facilities.

7.2. Whenever any such project is funded, in whole or in part, with federal or state highway monies, if the federal or state government provides compensation for utility adjustments, the City shall request that compensation be provided to the Company by the funding authority. If the City receives such requested utility adjustment compensation, it shall deliver same to the Company.

SECTION 8. Company Rules and Regulations, Jurisdiction.

8.1. The Company and its successors and assigns shall have the right to adopt and enforce Rules of Service for service hereunder not inconsistent with the law or this Franchise and shall be subject to the original jurisdiction of the City or other regulatory authorities having jurisdiction from time to time.

8.2. This Franchise shall be governed in accordance with and construed by the laws of the State of Texas. If there is a dispute between the City and the Company on any issue arising under this Franchise Ordinance or the operation of the Franchise created thereunder, other than where an appeal is subject to the Texas Gas Utility Regulatory Act or subsequent regulatory authority, as it may be amended from time to time, the parties agree that trial of such action shall be vested exclusively in the Travis County State District Courts or in the United States District Court for the Western District of Texas.

SECTION 9. Curtailments.

9.1. The Company agrees to actively seek to provide the best mix of gas

supply at the lowest prices consistent with its duty to provide safe and reliable services to its Customers. The Company shall make an annual report to the City of its gas supply activities relating to the City of Austin, and in addition shall provide such a report upon the circumstances in which it is required to undergo a management audit as set out in this Franchise.

9.2. To reduce greenhouse gas emissions and air pollutants, the Company will seek to purchase responsibly sourced gas that is produced, processed, and transported with lower leakage rates in the supply chain when available and economically feasible.

9.3. To the extent not inconsistent with the curtailment requirements of the Railroad Commission of Texas and the Company's filed tariffs and rate schedules, the Company shall exercise its best efforts under reasonable terms and conditions, to maintain an adequate supply of natural gas to meet the requirements of residential Consumers, hospitals, and essential governmental services within the municipal limits of the City of Austin.

9.4. The Company's undertakings shall be subject to its ability, by use of due diligence and normal business methods, to obtain and place in service the necessary materials and facilities. Moreover, the Company shall be excused from failure or delay in performing such obligations if and to the extent occasioned by an act of God, fire, explosion, flood, act of a public enemy, contagion or contamination hazardous to human life or health, legal restraints, labor difficulties, material shortages, interruption or deficiency of gas supply not attributable to default of the Company or, without limitations, any other cause or combination of causes not reasonably within the Company's ability to anticipate or control. The Company shall notify the City promptly and in no case less than 30 days of its intent to utilize this provision of this Franchise. In any case of shortage of gas supply due to any cause where the Company, by reason thereof, is unable to furnish gas for all purposes, preference shall be as specified in the curtailment procedure set forth in its Rules of Service.

SECTION 10. Leak Detection and Repair.

10.1 Throughout the term of this Franchise, the Company shall continue to employ and update its use of industry-leading advance leak detection and repair ("LDAR") technologies.

10.2 Beginning in December 2026, the Company will submit annual reports to Austin Financial Services detailing the performance of its LDAR programs within the City. At a minimum, each annual report must contain (1) an overview of the Company's

LDAR practices and the technologies employed within the City, (2) a statement of leak detection survey frequency within the City, (3) a description of the Company's mitigation strategies for leaks within the City, (4) the average response time for gas emergencies within the City, and (5) the average leak repair time within the City. The Company will also include a copy of its annual PS – 95 Report submitted to the Railroad Commission of Texas. To the extent known, the report must include fugitive methane emissions and fugitive methane emissions rates for the City to the maximum geographic precision achievable using the Company's then-current technology. If the Company cannot measure or report emissions specifically for the City, it shall provide such data for the smallest geographic area encompassing the City that its technology can measure and report.

SECTION 11. Annexations and Disannexations by City.

The City shall notify the Company in writing of the annexation or disannexation of any territory by the City. Upon receipt of notice of annexation from the City, the Company shall have 60 days to begin collecting and paying the Franchise Fee for any revenues received from the Company's Customers and/or Consumers residing in the newly annexed territories.

SECTION 12. Fees, Rates.

12.1 Since the Public Rights-of-Way and Public Easements to be used by the Company in the operation of its system within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and since the grant to the Company of the use of said Public Rights-of-Way and Public Easements is a valuable property right without which the Company would be required to invest substantial capital in right-of-way costs and acquisitions, and since the City will incur costs in regulating and administering the Franchise, the Company shall, throughout the term of this Franchise, pay the City the aggregate sum of five percent of the Company's total Gross Revenues, per billing period.

12.2 The Franchise Fee shall be paid quarterly to the City on or before the 15th day of the second month following the end of the quarterly period for which said payment is due. The Franchise Fee payment shall be made via electronic funds transfer. At the time said payment is made, the Company shall deliver to Austin Financial Services or successor in function, a summary statement indicating the derivation and calculation of such electronic funds transfer payment. For purposes of determining such fee, the books of the Company shall at all reasonable times be subject to inspection by the duly authorized representatives of the City, subject to the City providing 20 days' written notice to the Company of its intent to conduct such

inspection. The inspection and audit shall be limited to the four years immediately preceding the date of the written notice. The expense of all audits and reviews of all Company records for the purpose of the operation of this Franchise shall be considered a reasonable and necessary expense for the Company's cost of service.

12.3 In the event any quarterly payment is made after 5:00 p.m. on the date due, the Company shall pay to the City a late payment charge of the greater of:

- (a) \$100, or
- (b) Simple interest at 10 percent annual percentage rate of the total amount past due.

12.4 The Franchise Fee shall be in lieu of any and all other rentals or compensation or Franchise, license, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, and such other charges imposed uniformly upon persons, firms or corporations then engaged in business with the City), or permits upon or relating to the business, revenue, Franchise, gas lines, installations and systems, conduits, storage tanks, pipes, fixtures and other facilities of the Company and all other property of the Company and its activities, or any part thereof, in the City which relate to the operations of the Company's gas Distribution System.

12.5 Said Franchise Fees shall accrue to the City only so long as the City, after notice and the opportunity to cure in the instance of disagreement between the parties, does not charge, levy, require or collect any other rentals or compensation of franchise, license, privilege, instrument, occupation, inspection, excise or revenue taxes, fees or other exactions or charges relating to the operation of the Company's gas Distribution System in the City as aforesaid.

12.4 The Franchise Fees defined in this Franchise Ordinance are a reasonable and necessary operating expense of Company and may be fully recovered by Company by collection from its Customers in the City, whether asserted retroactively or prospectively, by revising its rate schedules, assessing an additional charge to the monthly bills of its Customers within the City, adding an additional charge to the Company's purchased gas adjustment clause for the City or in any legal manner approved by the City.

12.5 Council hereby expressly reserves the right, power, and authority to fully regulate and fix the rates and charges for the services of the Company to its

Consumers as provided by State law and the City Charter.

(A) The Company may from time to time propose changes in its general rates by filing an application with the City Secretary for the consideration of Council. Within a reasonable time consistent with law, Council shall afford the Company a fair hearing with reference to the application and shall either approve or disapprove the proposed changes or make such order as may be reasonable.

(B) In order to ascertain any and all facts, Council or its designate shall have full power and authority to inspect, or cause to be inspected, the books of the Company, and to inventory and appraise, or cause to be inventoried and appraised, the property of the Company, and to compel the attendance of witnesses and the production of books and records.

(C) The City shall not allow as to rates or services an unreasonable preference or advantage to anyone within a service classification, nor allow the Company to subject anyone within a service classification to any unreasonable prejudice or discrimination. Neither shall the Company grant, directly or indirectly, any rebate, in the form of money or any other thing of value, to any Consumer in order to circumvent the rate schedules filed with the City pursuant to this Franchise Ordinance.

(D) Council has authority to require the Company to allocate costs of facilities, revenues, expenses, taxes, and reserves between the City and other municipalities or unincorporated areas, consistent with State Law.

12.6 Company shall follow its approved Rules of Service (tariffs) and all applicable Railroad Commission of Texas orders related to the recovery from Customers of any Developer Incentives for contracts executed by Company on or after June 30, 2024, or for contracts amended or extended on or after June 30, 2024. Company's Developer Incentives are not eligible for inclusion in an energy-conservation program adopted pursuant to 16 Texas Administrative Code Section 7.480.

12.7 The Company agrees that the City may, at any time during the term of this Franchise, at the expense of the Company, obtain expert assistance and advice in determining fair, just, and reasonable rates to be charged by the Company to its Consumers in the corporate limits of the City, and in determining the extent to which the Company is complying with the terms and conditions of this Ordinance. The Company agrees to pay reasonable expenses in connection therewith, or reimburse the City for the same, which expense the Company shall be entitled to recover through rates and tariffs.

12.8 The Company shall file annually with the City's Chief Financial Officer, or designee, no later than four (4) months after the end of the Company's fiscal year, annual audited statements of the Company. The certified public accountant preparing the statement shall certify that the statement is in accordance with applicable generally accepted accounting principles.

12.9 If Company should at any time after the effective date of this Franchise Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public right-of-way in a manner that, if applied to the City, would result in a Franchise Fee greater than the amount otherwise due City under Section 12.1 of this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Franchise Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

SECTION 13. Indemnity.

The Company shall indemnify, defend, and save harmless the City, its agents, officers and employees, against and from any and all claims by or on behalf of any person, firm, corporation, or other entity, arising from the Company's construction, operation or management of its transmission or Distribution System, or arising from any act of negligence of the Company, or any of its agents, contractors, servants, employees, or licenses, including a breach of the Company's obligation under this Franchise to provide the City information contained in written reports that is free of material misrepresentation, and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or intentional acts or omissions of the City, its officers and employees. In the event a claim allegedly arises from the concurrent fault of both the City and the Company, the Company must indemnify the City to the full proportionate extent to which the Company is found to be responsible. The City shall promptly notify the Company of any claim or cause of action which may be asserted against the City relating to or covering any matter against which the Company has agreed, as set forth above, to indemnify, defend and save harmless the City. The Company reserves the right, but not the obligation, to employ such attorneys, expert witnesses, and consultants as it deems necessary to defend against the claim or cause of action. The Company shall have the right to investigate, defend, and compromise all claims referred to herein after conferring with the Austin City

Attorney's Office. It is understood that it is not the intention of either the City or the Company to create any liability, right or claim for the benefit of third parties and this Franchise Ordinance is intended and shall be construed for the sole benefit of the City and the Company.

SECTION 14. Insurance.

The Company will maintain a level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise that is consistent with best industry practices. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by the Company in accordance with sound accounting and risk-management practices. A current certificate shall be provided to the City upon execution of this Franchise and upon any modification in coverage thereafter. The Company shall be responsible for paying all self-insurance retention and insurance deductibles associated with the payment of any claim arising from activities conducted under this Franchise.

SECTION 15. Equal Employment Opportunity.

15.1 The Company shall adhere to equal employment practices within the City of Austin, and to all federal, state, and local rules and laws pertaining to discrimination, equal employment, and affirmative action.

15.2 The Company shall provide equal employment opportunity to minorities, women and the physically disabled at all levels and in all phases of operation. In addition, the Company shall promulgate an affirmative action policy which shall cover, in addition to employment: training, the granting of internships, purchasing, and the employment of subcontractors.

15.3 Company shall make all reasonable efforts to comply with its affirmative action commitments.

SECTION 16. Forfeiture and Termination.

16.1 In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to declare this Franchise forfeited and to terminate the Franchise and all rights and privileges of the Company hereunder in the event of a material breach of its terms and conditions. A material breach by the Company shall include, but shall not be limited to, the following:

(A) Failure on more than three (3) occasions to pay when due the

Franchise Fee prescribed by Section 12 hereof;

(B) Failure to pay a single installment of the Franchise Fee in full (including late payment charges in accordance with §12.3) within 30 days after the due date, in the absence of a bona fide dispute communicated to the City in writing on or before the due date of the applicable Franchise Fee installment;

(C) Failure to materially comply with any provision in this Franchise Ordinance;

(D) Material misrepresentation of fact in the application for or negotiation of the Franchise; and

(E) Conviction of any director, officer, employee, or agent of the Company of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise to the Company.

16.2 The foregoing shall not constitute a material breach if the violation occurs without fault of the Company or of its employees or occurs as a result of circumstances beyond its control. Company shall not be excused by mere economic hardship or by malfeasance or the malfeasance of its directors, officers, or employees.

16.3 In order for the City to declare forfeiture, the City shall make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by the Company continues for a period of 45 days following such written demand without written proof that corrective action has been taken or is being actively and expeditiously pursued to completion, Council may take under consideration the issue of termination of the Franchise. The City shall cause to be served upon the Company, at least 20 days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider.

16.4 The Council shall hear and consider the issue, shall hear any person interested therein, and shall determine, in its discretion, whether or not any violation by the Company has occurred.

16.5 If the Council shall determine that the violation by the Company was the fault of the Company and within its control, the Council may declare the Franchise of the Company forfeited and terminated, or the Council may grant to Company a period of time for compliance. Nothing herein shall be deemed a waiver

of the Company's right to pursue all available legal remedies.

SECTION 17. Change of Control.

Upon the foreclosure or other judicial sale of all or a substantial part of the Distribution System within the corporate limits of the City, or upon the leasing of all or a substantial part of the Distribution System, the Company shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place and the provisions of this Franchise governing the consent of the Council to such changes in control of the Company shall apply.

SECTION 18. Receivership and Bankruptcy.

The Council shall have the right to cancel this Franchise 120 days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action in proceeding, whether voluntary or involuntary, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

- (A) Within 120 days after his or her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; or
- (B) Such receiver or trustee, within 120 days, shall have executed an agreement, duly approved by the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise granted to the Company.

SECTION 19. Purchase.

19.1 The City shall have the option to purchase the Company's Distribution System within the City of Austin at any time during the term of this Franchise.

19.2 The following are conditions precedent to the exercise of City's option to purchase:

- (A) The City must provide the Company with written notice of the City's intention to exercise its option to purchase the Company's property devoted to the Distribution System.

- 760 (B) Within 90 days after receipt of the notice of intention to exercise
761 its option, the Company shall make a written offer (“Offer”)
762 stating the cash price at which the Company is willing to close the
763 purchase and sale of the Distribution System. Within 90 days of
764 the receipt of the Offer, the City must give written notice to the
765 Company (a) that the Offer is rejected and the appraisal procedures
766 set forth in Section 19.3 are to be initiated, (b) that the City agrees
767 to purchase the Distribution System for cash at the cash price
768 stated in the Offer, or (c) that the City withdraws its notice of intent
769 to exercise its purchase option.
- 770 (C) If the City agrees to purchase the Distribution System at the price
771 stated in Company’s Offer, the parties shall negotiate the terms of
772 a definitive purchase agreement in good faith. Closing shall take
773 place within 30 days after satisfaction of all conditions precedent
774 to the sale in the purchase agreement are satisfied, or at such other
775 time upon which the parties may mutually agree.

776 19.3 Upon initiation of the appraisal procedures set forth in this section, the
777 Company and the City shall each appoint an appraiser within 30 days after delivery
778 of the written election for appraisal under Section 19.2. The appraisers shall be
779 experienced in the evaluation of gas distribution systems, and neither appraiser shall
780 have worked for either the City or the Company within five (5) years of the date of
781 appointment or be otherwise disqualified from rendering independent judgment. The
782 City and the Company shall each immediately provide the name, mailing address
783 and telephone number of its appointee to the other party. The appointed appraisers
784 shall agree on the appointment of a third appraiser with like qualifications to be
785 engaged if required pursuant Section 19.4 below.

- 786 (A) Within 30 days after appointment of the appraisers and after no
787 less than fifteen (15) days’ written notice to the parties, the
788 appraisers shall commence their determination of the appraisal
789 value of the Distribution System.
- 790 (B) Within 90 days after the commencement of the appraisal process,
791 the appraisers shall each file with the City and the Company a
792 written proposed decision on the appraised value, including
793 detailed written findings explaining the basis of the proposed
794 valuation. The factors for the appraisers to consider in arriving at
795 a fair market value for the Company’s facilities shall include, but
796 not be limited to, the following:

- (1) the book value of the assets constituting the Company's Distribution System within the City of Austin;
- (2) the age and condition of the physical plant and equipment;
- (3) the discounted future revenue stream generated from the customer base; and
- (4) the remaining useful life of the Company's Distribution System within the City of Austin.

19.4 If there is a greater than five percent difference between the proposed valuations in the Parties appointed appraisers' written proposed decisions, then within 45 days after the submission of the proposed decisions, the third appraiser must file with the City and the Company a written proposed decision on the appraised value, including detailed written findings explaining the basis of the proposed valuation and including the factors detailed in Section 19.3 (B) above. The final appraised value shall be equal to the average of the three proposed valuations. However, if any one of the three proposed valuations is higher or lower than one or both of the other two proposed valuations by more than 10 percent, the final appraised value shall be equal to the average of the other two proposed valuations.

19.5 Closing shall be held at a mutually agreeable location 120 days after the appraisers file the final written proposed decision. At the closing, the City shall pay the cash price stated in the final appraisal value.

19.6 The time periods specified in this section may be modified or extended only by a writing duly authorized and executed by both the City and the Company. Such authorization shall not be unreasonably withheld, provided that any such request shall be made in writing and received by the other party within a reasonable time prior to the expiration of the time period sought to be extended.

19.7 In the event the City decides not to purchase the Company's Distribution System or the City is financially unable to close the purchase of the Company's Distribution System within the time set forth herein, the City's purchase right shall be deemed waived and the Company may recover from Customers its costs and expenses expended in preparing for the purchase transaction, subject to the City's review of such costs and expenses for reasonableness.

SECTION 20. Severability.

20.1 If any word, phrase or one or more provisions of this Franchise are held

to be void, voidable, or unenforceable by a court of competent jurisdiction in a final judicial action, the word(s), phrase(s), or provision(s) are severed from the remaining provisions of the Franchise. Such a word, phrase, or provision shall not affect the legality, validity, or constitutionality of the remaining portions of this Franchise. The City and the Company enter into this Franchise and each of its provisions regardless of any provision that is held to be illegal, invalid, or unconstitutional, provided, however, that the City and the Company each reserves the right to terminate the agreement authorized by this Franchise Ordinance if any provision set out herein is held to be illegal, invalid or unconstitutional.

20.2 Nothing herein contained shall be construed as granting any exclusive franchise or right.

SECTION 21. Interpretation.

The use of captions or headings for the various sections of this Ordinance are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to resolve ambiguities in a contract against the party drafting such contract shall not apply to this Franchise.

SECTION 22. Dispute Resolution.

22.1 If a dispute arises out of or related to the Franchise, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt, in good faith, to negotiate resolution of the dispute. If within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

22.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Company agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to

act as mediator. Nothing in the Franchise prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC).

22.3 The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Company will equally share costs of the mediator selected to mediate the dispute.

PART 2. In compliance with state law and Article XI (*Franchises and Public Utilities*), Section 3 (*Ordinance Granting Franchise*) of the City Charter, the Company shall bear the expense of publishing required notice of this Ordinance in a newspaper of general circulation in the City within five days after each of the three readings of this Ordinance.

PART 3. If any of the terms of this ordinance conflicts with the City Charter, the terms of the Charter prevail.

PART 4. Ordinance No. 20061005-023 is repealed on the effective date of this ordinance.

PART 5. This ordinance takes effect on _____, 2026.

PASSED AND APPROVED

_____, 2026 § _____
Kirk Watson
Mayor

APPROVED: _____ **ATTEST:** _____
Deborah Thomas Erika Brady
City Attorney City Clerk