

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.

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

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

1.4.1.5. “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.

34 ~~1.5.1.6.~~ “Consumer” shall mean any person or organization within the  
35 corporate limits of the City of Austin receiving and using gas from the Company for  
36 his or her own appliances or equipment, whether or not the gas is billed directly to  
37 him or her, or to a second party. (For example, in the case of a rental unit where the  
38 utilities are part of the rent, the landlord is a Customer and the tenant is a Consumer.)

39 ~~1.6.1.7.~~ “Corporate limits” shall mean all areas lying within the City limits  
40 and full purpose annexed adjacent areas, as they may change from time to time.

41 ~~1.7.1.8.~~ “Council” shall mean the governing body of the City of Austin.

42 ~~1.8.1.9.~~ “Customer” shall mean any natural person, corporation, partnership,  
43 firm, association or unincorporated association, trust, municipality, public or private  
44 entity or other legally recognized entity, whether for-profit or not-for-profit, located  
45 within the municipal corporate limits of the City and serviced by the Company with the  
46 sale or transportation of natural gas through any use of the Public Right-of-Way.

47 ~~1.9.1.10.~~ “Developer Incentives” shall mean any amounts paid to developers by  
48 the Company that are not Developer Infrastructure Costs.

49 ~~1.10.1.11.~~ “Developer Infrastructure Costs” shall mean any reasonable amounts  
50 paid to developers by the Company for installation of infrastructure necessary to  
51 providing natural gas service, reasonable costs related to acquiring necessary rights-of-  
52 way, and reasonable costs related to the management of facility installation activities.

53 ~~1.11.1.12.~~ “Director of Public Works” shall mean the Director of the Austin  
54 Transportation and Public Works Department, or successor in function.

55 ~~1.12.1.13.~~ “Distribution System,” or “Austin Distribution System” shall mean, in  
56 its entirety, all pipes, equipment and other appurtenances and any portion thereof, used or  
57 necessary for the transporting and delivery of gas by the Company to Customers and  
58 Consumers within the corporate limits of the City.

59 ~~1.13.1.14.~~ “Emergency” is defined as sudden and unforeseeable damage or  
60 malfunction of a portion of the Company’s Austin Distribution System that is potentially  
61 a threat to life, health, or property.

62 ~~1.14.1.15.~~ “End user” is defined as an individual or business, other than a  
63 business that generates electricity for resale to wholesale or retail customers, that  
64 consumes natural gas during the pursuit of its private or commercial purposes.

65 ~~1.15.1.16.~~ “Franchise” or “Franchise Ordinance” shall mean this Ordinance, and  
66 all rights and obligations established herein.

67 ~~1.16.1.17.~~ “Franchise Fee(s)” shall mean the sum of fees to be paid to the City  
68 by the Company as defined in Section 12 of this Ordinance.

69 ~~1.17.1.18.~~ “Gas” shall mean natural gas and any synthetic gas distributed by the  
70 Company through its Distribution System.

71 ~~1.18.1.19.~~ “Gross Revenues” shall mean all revenue derived or received, directly  
72 or indirectly, from the sale of gas to all classes of Customers and Consumers (excluding  
73 gas sold to another gas utility in the City for resale to its customers within the City and  
74 the gross revenues from gas sold to the City for its own use) within the corporate limits  
75 of the City.

76 (A) “Gross Revenues” shall include:

77 (1) revenues derived from the following miscellaneous charges:

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

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

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

82  
83 (2) gross receipts from gas sales and gross receipts from gas transportation  
84 within the City;

85 (3) amounts collected for State gross receipts tax;

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

91 (5) the value of Transport Gas transported by the Company for Transport  
92 Customers, through the System of the Company located in the City’s  
93 Public Rights-of-Way (“Third Party Sales”) (excluding the value of any  
94 gas transported to another gas utility in the City for resale to its

95 customers within the City), with the value of such gas to be established  
96 by utilizing either the purchase price (\$/MMbtu) of the Transport Gas  
97 as reported to the Company by its Transport customers or a price equal  
98 to the Houston Ship Channel Index of prices (\$/MMbtu) for large  
99 packages of gas published each month in Inside FERC’s Gas Market (or  
100 a successor publication or another publication agreed upon by the City  
101 and Company) as reasonably near the time that the transportation  
102 service is performed; and

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

104 (B) “Gross revenues” shall not include:

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

108 (2) sales taxes;

109 (3) any interest income earned by the Company;

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

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

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

115 (7) contributions in aid of construction;

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

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

120 (C) Securitization charges or other similar temporary or special rates or charges  
121 authorized by the State of Texas, including Customer Rate Relief Charges and any future  
122 charges recovered through state-approved bond issuances, are regulatory pass-through  
123 items governed exclusively by state law and Railroad Commission of Texas order.  
124 Accordingly, such securitization charges shall not be subject to any Franchise Fee,

125 program surcharge, City-imposed fee, or other charge under this Franchise, nor shall they  
126 be included within Gross Revenues for Franchise Fee purposes.

127 1.19 “Public Easement” shall mean those public easements held, owned, or  
128 controlled by the City, excluding those which are located in City Parks, Austin Water  
129 Wildlands, or other conservation land, the terms, conditions, or limitations upon which  
130 expressly allow ~~are not inconsistent with~~ the construction or maintenance of a natural  
131 gas distribution system.

132 1.20 “Public Right(s)-of-Way” shall mean present and future Streets,  
133 avenues, boulevards, parkways, lanes, Alleys, bridges, ~~grounds, Sidewalks, parks,~~  
134 ~~easements,~~ highways, and public thoroughfares, ~~and any other public places,~~ if  
135 allowed by law, within the municipal corporate limits of the City, ~~whether dedicated~~  
136 ~~or not~~ as they now exist or may be, hereafter, constructed, opened, laid out or  
137 extended within the present limits of the City or in such territory as may, hereafter,  
138 be added to, consolidated, or annexed to the City, but only those Public Rights-of-  
139 Way that have been dedicated to and accepted by the City. City Parks are not  
140 included in this definition.

141 1.21 “Service Line” shall mean lines connected at or nearly at right angles to  
142 the Company’s mains and used to convey gas therefrom to the property line of  
143 Customers and/or Consumers.

144 ~~1.22 “Sidewalk” is that portion of a street which is not improved and~~  
145 ~~maintained for vehicular travel.~~

146 ~~1.23~~ 1.22 “Street” or “Alley” shall mean a publicly dedicated or maintained  
147 right-of-way, a portion of which is open to use by the public for vehicular travel.

148 ~~1.24~~ 1.23 “Transport Gas” or “transported gas” shall mean gas owned or  
149 controlled by a user or its designee (i.e., gas that is purchased or otherwise acquired  
150 by an End user from someone other than the Company) and delivered by such user or  
151 its designee to the Company at a point on the Company’s Distribution System, such  
152 point of delivery to be defined by the Company, and carried, delivered or transported  
153 through the Company’s system at a point of redelivery in the City by the Company to  
154 the user, for a fee. The terms and conditions of the transportation arrangement,  
155 including but not limited to the delivery point(s) of redelivery, measurement and  
156 location of title transfer, shall be as set forth in the contract entered into between the  
157 Company and the End user and/or the Company’s transportation tariffs on file with  
158 the Railroad Commission of Texas or other appropriate regulatory authority.

159 1.251.24 “Unmetered Gas” shall mean that gas being moved under pressure  
160 from the Company’s main lines to the Customers’ and/or Consumers’ meter.

161 **SECTION 2. Granting of Franchise.**

162 2.1. The City hereby grants to the Company a non-exclusive Franchise to  
163 maintain, construct, equip, extend, alter and otherwise establish and operate in the  
164 City, as now or hereafter constituted, works, systems, plants, lines and all related  
165 facilities (including those now in service) necessary or appropriate to sell,  
166 manufacture and store, distribute, transport, convey or otherwise conduct, serve,  
167 supply and furnish the inhabitants of the City and others, and to the City, whenever  
168 the City may desire to contract therefore, gas for light, fuel, power, heat and any and  
169 all other useful purposes, and the Company is hereby granted passage, right-of-way  
170 in, under, along and across, the right to occupy and use in any and all lawful way  
171 during the life of this Franchise any and all Public Rights-of-Way and Public  
172 Easements, now or may hereafter exist, and lawful purpose as herein mentioned.  
173 Nothing in this Franchise shall grant the Company the right to use or operate a gas  
174 distribution system owned by the City, absent a separate license agreement supported  
175 by independent consideration.

176 ~~2.2. The Company shall be allowed to operate and maintain all lines existing~~  
177 ~~on the effective date of this Franchise within City Parks, or then existing on land~~  
178 ~~hereinafter designated or used as a City Park but shall not undertake a major~~  
179 ~~replacement of such lines or lay new lines within said City Park. In the event that the~~  
180 ~~Company has no feasible and prudent alternative to laying a new line or replacing a~~  
181 ~~line which avoids a City Park, and the cost associated therewith exceeds the cost of~~  
182 ~~laying said line in whole or in part within a City Park by 15 percent or more, then the~~  
183 ~~Company may directly petition the Council for permission to cross City Park lands.~~  
184 ~~The petition must include the Company’s grounds for its assertion that there is no~~  
185 ~~prudent or reasonable alternative to replacing or laying a line in a City Park. Within~~  
186 ~~ninety (90) days of the filing of said petition, Council shall, in accordance with~~  
187 ~~applicable law, including without limitation, Texas Parks and Wildlife Code Chapter~~  
188 ~~26, either permit the Company to use City Park land, or authorize the Company to,~~  
189 ~~immediately upon completion of such project, adjust its rates for gas service to~~  
190 ~~permit recovery of such total excess costs plus applicable financing charges at the~~  
191 ~~then current prime rate over a period of three (3) years, by surcharge.~~

192 2.2. The Company shall be allowed to continue to operate, repair and maintain  
193 all lines existing on the effective date of this Franchise within currently designated City  
194 Parks, Austin Water Wildlands and conservation lands, or hereinafter within areas

195 formally designated as a City Park, Austin Water Wildland or City of Austin  
196 conservation land but shall not undertake a major replacement of such lines or lay new  
197 lines within said City Park, Austin Water Wildland or City of Austin conservation land.

198 2.3. The construction, maintenance, and operation of the Company’s  
199 Distribution System and property of the Company subject to this Franchise shall be  
200 subject to ordinances and regulations passed or approved by the City Council,  
201 including without limitation Title 14 – Use of Streets and Public Property, as  
202 amended, to the extent that such ordinances and regulations are not in conflict with  
203 the laws of the United States, the State of Texas, or the orders, rules or regulations of  
204 the Railroad Commission of Texas or other regulatory authority where such  
205 authorities have pre-emptive jurisdiction over the subject matter of such City  
206 ordinances or regulations.

207 2.4. The term of this Franchise shall expire ten years from the effective date  
208 of this Franchise Ordinance and shall include any period between October 16, 2026,  
209 and the effective date. Company shall provide written notice of the expiration of this  
210 Franchise Ordinance to Austin Financial Services (or successor in function) and the  
211 Director of Public Works no later than one year prior to the expiration of this  
212 Franchise Ordinance.

213 2.5. (A) The Company shall not transfer this Franchise, including as part of  
214 a sale of stock or assets involving the Company and some or all of its divisions and  
215 subsidiaries, without the written approval of the Council expressed by ordinance, and  
216 such approval shall not be unreasonably withheld.

217 (1) Council may revoke this Franchise if the Company sells, transfers,  
218 conveys, or otherwise disposes of its rights or interests under this  
219 Franchise, or attempts to do so, without the Council’s prior written  
220 consent. All rights and interests of the Company shall cease if this  
221 Franchise is revoked pursuant to this provision.

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

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

224 (B) Nothing in this Franchise may be construed to grant, renew,  
225 extend, or amend by estoppel or indirection any right, franchise or easement affecting  
226 the Public Rights-of-Way, public places, or other real property. Only Council shall  
227 have the power by ordinance to grant, renew, and extend a franchise to all service

228 providers placing or installing facilities or equipment in, on or over the Public Right-  
229 of-Way and of all public utilities of every character operating within the City, and  
230 with the consent of the franchise holder. In consideration of the foregoing, and the  
231 authority of the City to impose reasonable regulations to ensure safe, efficient, and  
232 continuous service to the public, the City and the Company have established the  
233 following procedures regarding sale of the Distribution System and transfer of the  
234 Franchise:

- 235 (1) In the event the Company expresses its intent by letter or contract to  
236 sell its Distribution System located within the City, separate and  
237 apart from other assets of the Company, then the City may, within 60  
238 days of receiving such notice, provide notice to the Company of its  
239 intent to exercise its option to commence purchasing the Company's  
240 Austin Distribution System in the manner provided in Section 19 of  
241 this Franchise. When the City has completed its purchase of the  
242 Company's Austin Distribution System, the Company shall be  
243 released from its obligations or liabilities under this Franchise.
- 244 (2) If the City does not elect to exercise its option to commence purchasing  
245 the Company's Austin Distribution System under Section 19 of this  
246 Franchise, then the City shall commence an investigation to determine if  
247 the Franchise should be transferred to the entity to whom the Company  
248 intends to sell the Austin Distribution System. The City's investigation  
249 of the proposed purchaser must be completed within 30 days from the  
250 date of receipt of notice from the Company. The Company shall provide  
251 the City with any public information about the proposed purchaser of its  
252 Distribution System that is within its possession, and that it may legally  
253 provide, within seven consecutive days of a written request from the  
254 City. Following completion of the investigation and the City's  
255 determination of its desire to approve the transfer of the franchise to the  
256 proposed purchaser, the City shall approve such transfer by ordinance,  
257 under the same terms and conditions as this Franchise, within a time  
258 period consistent with the requirements of the City Charter. Approval of  
259 the transfer of this Franchise shall not be unreasonably withheld. The  
260 Company shall be released from its obligations or liabilities under this  
261 Franchise upon the transfer thereof to the new franchisee.
- 262 (3) In the event the City determines, for good cause, that it will not approve  
263 the transfer of this Franchise to the proposed purchaser of the Austin

264 Distribution System, then the City must set forth its reasons for not  
265 approving the transfer, and the Company shall not be released from its  
266 obligations or liabilities under this Franchise until such time as the City  
267 makes a determination not to extend or transfer the Franchise to a new  
268 franchisee. When the City makes its decision not to extend or to transfer  
269 the Franchise to the purchaser of the Company's Austin Distribution  
270 System, the City will immediately begin negotiations with the Company  
271 and the purchaser in an effort to address, in a timely manner, the City's  
272 reasons for not extending the Franchise.

- 273 (4) Nothing in this Franchise shall be construed to limit the City's right  
274 to reasonably refuse to transfer or extend the Franchise to the  
275 proposed purchaser.

276 2.6. The separation of the utility and non-utility properties of the Company  
277 into separate business organizations shall not operate to trigger the requirements of  
278 this section.

279 **SECTION 3. Acceptance by Company.**

280 3.1. This Franchise shall be accepted by the Company in writing, which  
281 acceptance shall be filed with the City within 60 days after the passage of this  
282 Ordinance by Council, and when so accepted, this Ordinance shall be a contract duly  
283 executed by and between the City and the Company.

284 3.2. The City, by the granting of this Franchise, does not surrender or to any  
285 extent lose, waive, imperil or lessen the lawful powers and rights now or hereinafter  
286 vested in the City under the Constitution and Statutes of the State of Texas and under  
287 the Charter of the City to regulate the rates, operations, and services of the Company;  
288 and the Company, by its acceptance of this Franchise, agrees that all such lawful  
289 regulatory power and rights as the same may from time to time be vested in the City  
290 shall be in full force and effect and subject to the exercise thereof by the City at any  
291 time and from time to time.

292 **SECTION 4. Service.**

293 4.1. Service shall be provided by means of the use of the Public Rights-of-  
294 Way and Public Easements. If additional Public Easements are necessary, they shall  
295 be the responsibility of the property owner requesting such service. All future  
296 Company facilities within the Public Rights-of-Way shall be located in a space

297 designated by the City. The Company shall not place its facilities where the same  
298 will interfere with any existing cable television, electric, water, street lights, fire  
299 lanes, or communications lines, or obstruct or hinder in any manner the various  
300 utilities serving the residents of the City.

301 4.2. The Company shall, as specified in its “Rules of Service,” as are now, or  
302 as shall in the future be approved by Council, or other regulatory authority having  
303 jurisdiction, furnish service without unreasonable discrimination to all areas of the  
304 City. The Company shall not deny service, or otherwise discriminate against  
305 applicants for service, Customers, or Consumers on the basis of race, religion,  
306 national origin, sex, or sexual orientation. The Company, and its successors and  
307 assigns, shall have the right to adopt and enforce its Rules of Service hereunder not  
308 inconsistent with the law of this Franchise Ordinance.

309 4.3. The City may require the Company to maintain a Termination of Service  
310 Policy in its Rules of Service that is identical to or consistent with that applied to  
311 similarly situated City utility customers. The City shall, commensurate with approval  
312 of any such change in the Company’s Rules of Service, provide for the recovery of  
313 the prospective cost impact associated with the change or changes.

314 4.4. The Company shall maintain its property and equipment in good order  
315 and condition consistent with the needs of the service to be rendered therefrom but  
316 may not be compelled to extend its facilities beyond the Consumer’s property line.  
317 It is recognized that the Company shall retain full title in and right to its personal  
318 property whether or not same is incorporated in real estate. The Company shall, at  
319 its own cost and without expense to any of its Customers or prospective Customers  
320 wherever permanent improvements are located on the premises of such current or  
321 prospective Customer and/or Consumer, construct and maintain a Service Line of  
322 proper size and capacity from its main to the property line of each current or  
323 prospective Customer and/or Consumer. The Company shall in every instance install  
324 all necessary lines moving Unmetered Gas.

325 4.5. The Company’s system and appurtenances shall be located, installed,  
326 and maintained so that, to the extent reasonably practicable, the facilities do not  
327 unreasonably interfere with any improvements the City may deem proper to make, or  
328 unnecessarily obstruct the free use of the Public Rights-of-Way, Public Easements, or  
329 public property.

330 4.6. Council may, in its discretion, pursuant to the authority of the City  
331 Charter, require a management audit of the Company’s operations in the City. The

332 costs of such audit shall be considered a reasonable and necessary expense for the  
333 Company’s cost of service.

334 4.7. By January 1, 2029, the Company agrees to implement, based on a new  
335 tariff to be adopted by the City, a monthly-financial assistance program for income-  
336 qualified Customers and include a monthly charge on Customer bills dedicated to funding  
337 such program.

338 4.8. The Company shall attend at least two meetings of the Resource  
339 Management Commission (or successor board or commission) every calendar year.

340 4.9. Beginning in December 2026, the Company shall annually file with Austin  
341 Financial Services a report addressing the Company’s expected capital improvements  
342 within the City for the upcoming year. The Company shall be solely responsible for  
343 identifying confidential or proprietary information in such annual reports. The City  
344 agrees to maintain the confidentiality of any confidential or proprietary information as  
345 designated by the Company to the extent allowed by law.

346 4.10. To improve public engagement and ensure transparent information flow  
347 between the Company and Customers, the Company shall organize and host no fewer  
348 than two public Customer meetings within 45 days of filing of an application for any  
349 proposed base rate increase or Interim Rate Adjustment (or “GRIP”) applicable to  
350 Customers during the term of the Franchise Ordinance. Company shall issue public  
351 notice of such public Customer meetings to City staff and each individual Customer  
352 impacted by the proposed rate increase no later than 10 days before the meeting date.  
353 Company representatives must be present at each public Customer meeting to address  
354 Customer concerns and questions. The Company must provide information at each  
355 public Customer meeting to explain the cause(s) of the rate increase at issue.

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

357 5.1. The Company is hereby authorized, licensed and empowered to do any  
358 and all things necessary and proper to be done and performed in executing the  
359 powers and utilizing the privileges herein mentioned and granted by this Franchise,  
360 provided the same do not conflict with existing water pipes, sewers, electric power  
361 lines, telephone lines, cable television lines and other authorized installations, and  
362 provided that all work done in said Public Easements and Public Rights-of-Way by  
363 the Company shall be done with the utmost diligence and without unnecessary  
364 inconvenience to the public or individuals. Further, the Company’s use of the  
365 foregoing shall be in accordance with all City Ordinances, the City’s Standards

366 Manual, and the City’s Standard Specifications Manual, as amended.

367 5.2. The main lines of the Company shall be laid in Public Rights-of-Way  
368 and other Public Easements, and when in Streets, Alleys, and avenues, shall be laid  
369 parallel with the curb line thereof, or in such locations as shall be most practical. The  
370 Company’s main lines shall be installed or replaced at depths which comply with all  
371 applicable state and federal rules and regulations establishing minimum safety  
372 standards for the design, construction, maintenance and operation of pipelines,  
373 provided, however, that from the effective date of this Agreement, in no case shall  
374 any new or relocated main line be laid less than 24 inches below the established  
375 street grade at the time of installation, without permission of the Director of Public  
376 Works.

377 5.3. When the Company shall desire to lay any mains or new Service Lines  
378 hereunder, and before commencing its construction work for mains or new Service  
379 Lines, it shall submit to the Director of Public Works or other proper authority an  
380 application for permit, and a map or plan showing the Public Rights-of-Way and  
381 other Public Easements wherein it proposes to construct its facilities. The Director of  
382 Public Works or other proper authority shall respond in writing to the Company  
383 within 10 calendar days of the Company’s submission either approving or rejecting  
384 the plan and, if a rejection, listing the reasons for such rejection. Actual approval by  
385 the Director of Public Works or other proper authority shall constitute a permit to the  
386 Company for the opening of all of the Public Rights-of-Way and other public places  
387 shown on the map or plan, and for the construction or laying of the main lines and  
388 other facilities or equipment by the Company. The Company shall not be required to  
389 secure a permit in advance of excavation in the event of an Emergency, as defined  
390 herein, provided that the Company shall file with the Director of Public Works no  
391 later than 10 days after the last day of such an Emergency, the information that the  
392 Company would have been required to pre-file had there not been an Emergency and  
393 detailed information that describes the circumstances of said Emergency.

394 5.4. In furtherance of the public interest in safety, health, and public welfare and  
395 to facilitate the safe management of the Public Rights-of-Way, the construction,  
396 expansion, reconstruction, excavation, use, maintenance and operation of the  
397 Company’s Distribution System and property is subject to all generally applicable City  
398 requirements. In addition to any other City requirements, the Company shall provide  
399 the City’s Office of Right of Way Management, or such other officials as the City may  
400 designate, construction plans and maps showing the routing of any new construction and  
401 construction plans, 45 days prior to the commencement of construction which involves

402 an alteration to the surface or beneath the surface of the Public Right-of-Way, to the  
403 extent generally required. The Company shall not begin construction until the plans and  
404 drawings have been approved in writing by the Office of Right of Way Management; this  
405 approval shall not be unreasonably delayed. The Company shall participate in the Austin  
406 Utility Location Coordination Committee (“AULCC”) meetings and coordinate new  
407 construction with the AULCC. The Company’s facilities shall bear the identification  
408 marks established by the AULCC if the facilities are installed after the AULCC  
409 establishes identification marks.

410 5.5. The Company is responsible for excavation restoration and ongoing repairs.  
411 The Company must clearly mark all pavement cuts to distinguish the Company’s work  
412 from other utilities in the Public Right-of-Way. Company excavation repairs and  
413 restoration of excavation sites in the Public Right-of-Way must comply with all  
414 requirements under the City’s Code of Ordinances, the City’s Standards Manual, and  
415 the City’s Standard Specifications Manual in effect at the time of the applicable repair  
416 or restoration. The Company will work with City staff to identify and avoid placement of  
417 new infrastructure in the City’s most environmentally sensitive locations, namely Austin  
418 Water Wildlands (including Balcones Canyonland Preserve lands and Water Quality  
419 Protection lands) and any other designated City Conservation lands. In the event the  
420 Company must construct infrastructure in the City’s most environmentally sensitive  
421 areas, the Company must restore disturbed areas to pre-disturbance topography and  
422 native species.

423 5.6. Any damage to City-owned utility infrastructure that occurs as a result of the  
424 Company’s operations in the Public Rights-of-Way or Public Easements shall be repaired  
425 solely at the Company’s expense. If Company’s operations within the Public Rights-of-  
426 Way damage or disrupt any existing traffic control devices on the pavement or curbside  
427 (including, but not limited to, lane lines, crosswalks, arrows, and traffic signage) or other  
428 assets (including, but not limited to, speed cushions/humps/tables, concrete  
429 medians/circulate intersections/crossings islands, curb extensions/bulb-outs, or  
430 bicycle/pedestrian facilities), the Company is responsible for restoring such markings and  
431 assets to pre-excavation conditions as soon as possible under the circumstances. The  
432 Company is responsible for denoting traffic control devices and assets within the extents  
433 of excavation on submitted plans, including City standard details for applicable traffic  
434 control devices and assets, for the City’s review and approval prior to the start of work.  
435 All temporary patches installed by the Company for compliance with the American  
436 Disabilities Act must receive a permanent replacement within 90 days from the date the  
437 Company installs the temporary patch.

438           5.7. If a meter is to be installed or relocated within the Public Right-of-Way or  
439 Public Easement, and where it is safe to do so, Company shall submit to the City  
440 aesthetics of the meter placement, when reasonable. In installation of all meters,  
441 Company must comply with the City’s placement requirements. If the City requires a  
442 meter upgrade, the Company shall comply so long as the costs incurred by the Company  
443 to change the meter and/or associated piping or equipment are reasonable and do not  
444 exceed the cost of the Company’s initial plan, in whole or in part, by 15 percent or  
445 more.

446           5.8. In the event of a conflict between the provisions of this Section 5 and those  
447 of City Code Chapter 14-11 or other ordinance of general applicability that regulates the  
448 use of the Public Right-of-Way, the provisions of the City Code shall govern.

449 **SECTION 6. Work by the City and Others.**

450           6.1 City reserves the right to lay, and permit to be laid, sewer, cable television,  
451 water, telephone and other pipelines, cables and conduits, and to perform and permit to  
452 be performed any underground or overhead work that may be necessary or proper in,  
453 across, along, over, or under any Public Right-of-Way, Public Easement, or public place  
454 occupied by the Company. The City shall be liable to the Company only for any damage  
455 to the facilities of the Company if caused by the negligence of the City or its employees.

456           6.2 If the City requires the Company to adapt or conform its Distribution  
457 System, or in any way alter, relocate or change its property to enable any person, firm,  
458 corporation or entity (whether public or private), other than the City, to use the Public  
459 Rights-of-Way, the Company shall be entitled to reimbursement from the person, firm,  
460 corporation or entity desiring or occasioning such change for any and all loss, cost or  
461 expense occasioned thereby.

462 **SECTION 7. Changes for Governmental Purposes.**

463           7.1. If, during the period of this Franchise, the City shall elect to alter or  
464 change the grade or alignment of any City Public Right-of-Way or other Public  
465 Easement, or any water pipe, wastewater pipe, or any overhead or underground  
466 structure within City Public Right-of-Way, so as to conflict with the facilities of the  
467 Company, the Company shall remove or relocate, as necessary, all of its facilities at  
468 its own expense. Schedules for this work shall be developed by designated  
469 representatives of the Company and the City. If such representatives cannot agree  
470 on the schedule, the Director of Public Works or his or her designee, after consultation  
471 with the Company, shall establish a schedule that allows for reasonable time for

472 budgeting and resource allocation as well as incorporates City permitting times.  
473 This schedule shall provide for a minimum of 30 days to exist between the time the  
474 schedule is furnished to the Company and the time that any specific work to  
475 commence by the Company covered in the schedule is to begin. The Company's  
476 duty to relocate shall also apply to any abandoned facilities that are determined by the  
477 City to be inconsistent with water, sewer, drainage, traffic or pavement industry  
478 standard safe operating practices for existing facilities or determined by the Company to  
479 be inconsistent with gas distribution industry standard safe operating practices for  
480 existing facilities.

481 7.2. Whenever any such project is funded, in whole or in part, with federal or  
482 state highway monies, if the federal or state government provides compensation for  
483 utility adjustments, the City shall request that compensation be provided to the  
484 Company by the funding authority. If the City receives such requested utility  
485 adjustment compensation, it shall deliver same to the Company.

## 486 **SECTION 8. Company Rules and Regulations, Jurisdiction.**

487 8.1. The Company and its successors and assigns shall have the right to adopt  
488 and enforce Rules of Service for service hereunder not inconsistent with the law or  
489 this Franchise and shall be subject to the original jurisdiction of the City or other  
490 regulatory authorities having jurisdiction from time to time.

491 8.2. This Franchise shall be governed in accordance with and construed by  
492 the laws of the State of Texas. If there is a dispute between the City and the  
493 Company on any issue arising under this Franchise Ordinance or the operation of the  
494 Franchise created thereunder, other than where an appeal is subject to the Texas Gas  
495 Utility Regulatory Act or subsequent regulatory authority, as it may be amended  
496 from time to time, the parties agree that trial of such action shall be vested  
497 exclusively in the Travis County State District Courts or in the United States District  
498 Court for the Western District of Texas.

## 499 **SECTION 9. Curtailments.**

500 9.1. The Company agrees to actively seek to provide the best mix of gas  
501 supply at the lowest prices consistent with its duty to provide safe and reliable  
502 services to its Customers. The Company shall make an annual report to the City of  
503 its gas supply activities relating to the City of Austin, and in addition shall provide  
504 such a report upon the circumstances in which it is required to undergo a  
505 management audit as set out in this Franchise.

506 9.1.9.2. To reduce greenhouse gas emissions and air pollutants, the  
507 Company will seek to purchase responsibly sourced gas that is produced, processed,  
508 and transported with lower leakage rates in the supply chain when available and  
509 economically feasible.

510 9.2.9.3. To the extent not inconsistent with the curtailment requirements of  
511 the Railroad Commission of Texas and the Company’s filed tariffs and rate  
512 schedules, the Company shall exercise its best efforts under reasonable terms and  
513 conditions, to maintain an adequate supply of natural gas to meet the requirements of  
514 residential Consumers, hospitals, and essential governmental services within the  
515 municipal limits of the City of Austin.

516 9.3.9.4. The Company’s undertakings shall be subject to its ability, by use  
517 of due diligence and normal business methods, to obtain and place in service the  
518 necessary materials and facilities. Moreover, the Company shall be excused from  
519 failure or delay in performing such obligations if and to the extent occasioned by an  
520 act of God, fire, explosion, flood, act of a public enemy, contagion or contamination  
521 hazardous to human life or health, legal restraints, labor difficulties, material  
522 shortages, interruption or deficiency of gas supply not attributable to default of the  
523 Company or, without limitations, any other cause or combination of causes not  
524 reasonably within the Company’s ability to anticipate or control. The Company shall  
525 notify the City promptly and in no case less than 30 days of its intent to utilize this  
526 provision of this Franchise. In any case of shortage of gas supply due to any cause  
527 where the Company, by reason thereof, is unable to furnish gas for all purposes,  
528 preference shall be as specified in the curtailment procedure set forth in its Rules of  
529 Service.

530 **SECTION 10. Leak Detection and Repair.**

531 10.1 Throughout the term of this Franchise, the Company shall continue to  
532 employ and update its use of industry-leading advance leak detection and repair  
533 (“LDAR”) technologies.

534 10.2 Beginning in December 2026, the Company will submit annual reports to  
535 Austin Financial Services ~~the Austin Transportation and Public Works Department~~  
536 detailing the performance of its LDAR programs within the City. At a minimum, each  
537 annual report must contain (1) an overview of the Company’s LDAR practices and the  
538 technologies employed within the City, (2) a statement of leak detection survey  
539 frequency within the City, (3) a description of the Company’s mitigation strategies for  
540 leaks within the City, (4) the average response time for gas emergencies within the City,

541 and (5) the average leak repair time within the City. The Company will also include a  
542 copy of its annual PS – 95 Report submitted to the Railroad Commission of Texas. ~~If at~~  
543 ~~any time during the term of this Franchise, the Company implements technology capable~~  
544 ~~of identifying fugitive methane emissions and fugitive methane emissions rates within the~~  
545 ~~City (rather than on a statewide level), the Company must begin including such~~  
546 ~~information in the annual reports submitted to the City under this section. To the extent~~  
547 ~~known, the report must include fugitive methane emissions and fugitive methane~~  
548 ~~emissions rates for the City to the maximum geographic precision achievable using the~~  
549 ~~Company’s then-current technology. If the Company cannot measure or report emissions~~  
550 ~~specifically for the City, it shall provide such data for the smallest geographic area~~  
551 ~~encompassing the City that its technology can measure and report.~~

552 **SECTION 11. Annexations and Disannexations by City.**

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

558 **SECTION 12. Fees, Rates.**

559 12.1 Since the Public Rights-of-Way and Public Easements to be used by the  
560 Company in the operation of its system within the boundaries of the City are valuable  
561 public properties acquired and maintained by the City at great expense to its  
562 taxpayers, and since the grant to the Company of the use of said Public Rights-of-  
563 Way and Public Easements is a valuable property right without which the Company  
564 would be required to invest substantial capital in right-of-way costs and acquisitions,  
565 and since the City will incur costs in regulating and administering the Franchise, the  
566 Company shall, throughout the term of this Franchise, pay the City the aggregate  
567 sum of five percent of the Company’s total Gross Revenues, per billing period.

568 12.2 The Franchise Fee shall be paid quarterly to the City on or before the  
569 15th day of the second month following the end of the quarterly period for which  
570 said payment is due. The Franchise Fee payment shall be made via electronic funds  
571 transfer. At the time said payment is made, the Company shall deliver to Austin  
572 Financial Services or successor in function, a summary statement indicating the  
573 derivation and calculation of such electronic funds transfer payment. For purposes of  
574 determining such fee, the books of the Company shall at all reasonable times be  
575 subject to inspection by the duly authorized representatives of the City, subject to the

576 City providing 20 days' written notice to the Company of its intent to conduct such  
577 inspection. The inspection and audit shall be limited to the four years immediately  
578 preceding the date of the written notice. The expense of all audits and reviews of all  
579 Company records for the purpose of the operation of this Franchise shall be  
580 considered a reasonable and necessary expense for the Company's cost of service.

581 12.3 In the event any quarterly payment is made after 5:00 p.m. on the date  
582 due, the Company shall pay to the City a late payment charge of the greater of:

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

586 12.4 The Franchise Fee shall be in lieu of any and all other rentals or  
587 compensation or Franchise, license, privilege, instrument, occupation, excise or  
588 revenue taxes or fees and all other exactions or charges (except ad valorem property  
589 taxes, special assessments for local improvements, and such other charges imposed  
590 uniformly upon persons, firms or corporations then engaged in business with the  
591 City), or permits upon or relating to the business, revenue, Franchise, gas lines,  
592 installations and systems, conduits, storage tanks, pipes, fixtures and other facilities  
593 of the Company and all other property of the Company and its activities, or any part  
594 thereof, in the City which relate to the operations of the Company's gas Distribution  
595 System.

596 12.5 Said Franchise Fees shall accrue to the City only so long as the City, after  
597 notice and the opportunity to cure in the instance of disagreement between the parties,  
598 does not charge, levy, require or collect any other rentals or compensation of franchise,  
599 license, privilege, instrument, occupation, inspection, excise or revenue taxes, fees or  
600 other exactions or charges relating to the operation of the Company's gas Distribution  
601 System in the City as aforesaid.

602 12.4 The Franchise Fees defined in this Franchise Ordinance are a reasonable  
603 and necessary operating expense of Company and may be fully recovered by  
604 Company by collection from its Customers in the City, whether asserted  
605 retroactively or prospectively, by revising its rate schedules, assessing an additional  
606 charge to the monthly bills of its Customers within the City, adding an additional  
607 charge to the Company's purchased gas adjustment clause for the City or in any  
608 legal manner approved by the City.

609           12.5 Council hereby expressly reserves the right, power, and authority to fully  
610 regulate and fix the rates and charges for the services of the Company to its  
611 Consumers as provided by State law and the City Charter.

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

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

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

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

632           12.6 Company shall follow its approved Rules of Service (tariffs) and all  
633 applicable Railroad Commission of Texas orders related to the recovery from Customers  
634 of any Developer Incentives for contracts executed by Company on or after June 30,  
635 2024, or for contracts amended or extended on or after June 30, 2024. Company's  
636 Developer Incentives are not eligible for inclusion in an energy-conservation program  
637 adopted pursuant to 16 Texas Administrative Code Section 7.480.

638           12.7 The Company agrees that the City may, at any time during the term of  
639 this Franchise, at the expense of the Company, obtain expert assistance and advice in  
640 determining fair, just, and reasonable rates to be charged by the Company to its  
641 Consumers in the corporate limits of the City, and in determining the extent to which  
642 the Company is complying with the terms and conditions of this Ordinance. The

643 Company agrees to pay reasonable expenses in connection therewith, or reimburse  
644 the City for the same, which expense the Company shall be entitled to recover  
645 through rates and tariffs.

646 12.8 The Company shall file annually with the City’s Chief Financial  
647 Officer, or designee, no later than four (4) months after the end of the Company’s  
648 fiscal year, annual audited statements of the Company. The certified public  
649 accountant preparing the statement shall certify that the statement is in  
650 accordance with applicable generally accepted accounting principles.

651 12.9 If Company should at any time after the effective date of this Franchise  
652 Ordinance agree to a new municipal franchise ordinance, or renew an existing  
653 municipal franchise ordinance, with another municipality, which municipal franchise  
654 ordinance determines the franchise fee owed to that municipality for the use of its  
655 public right-of-way in a manner that, if applied to the City, would result in a  
656 Franchise Fee greater than the amount otherwise due City under Section 12.1 of this  
657 Ordinance, then the franchise fee to be paid by Company to City pursuant to this  
658 Franchise Ordinance may, at the election of the City, be increased so that the amount  
659 due and to be paid is equal to the amount that would be due and payable to City were  
660 the franchise fee provisions of that other franchise ordinance applied to City.

661 **SECTION 13. Indemnity.**

662 The Company shall indemnify, defend, and save harmless the City, its agents,  
663 officers and employees, against and from any and all claims by or on behalf of any  
664 person, firm, corporation, or other entity, arising from the Company’s construction,  
665 operation or management of its transmission or Distribution System, or arising from  
666 any act of negligence of the Company, or any of its agents, contractors, servants,  
667 employees, or licenses, including a breach of the Company’s obligation under this  
668 Franchise to provide the City information contained in written reports that is free of  
669 material misrepresentation, and from and against all costs, counsel fees, expenses  
670 and liabilities incurred in or about any such claim or proceeding brought thereon;  
671 except that the indemnity provided for in this paragraph shall not apply to any  
672 liability resulting from the negligence or intentional acts or omissions of the City, its  
673 officers and employees. In the event a claim allegedly arises from the concurrent  
674 fault of both the City and the Company, the Company must indemnify the City to  
675 the full proportionate extent to which the Company is found to be responsible. The  
676 City shall promptly notify the Company of any claim or cause of action which may  
677 be asserted against the City relating to or covering any matter against which the  
678 Company has agreed, as set forth above, to indemnify, defend and save harmless the

679 City. The Company reserves the right, but not the obligation, to employ such  
680 attorneys, expert witnesses, and consultants as it deems necessary to defend against  
681 the claim or cause of action. The Company shall have the right to investigate, defend,  
682 and compromise all claims referred to herein after conferring with the Austin City  
683 Attorney’s Office. It is understood that it is not the intention of either the City or the  
684 Company to create any liability, right or claim for the benefit of third parties and  
685 this Franchise Ordinance is intended and shall be construed for the sole benefit of  
686 the City and the Company.

687 **SECTION 14. Insurance.**

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

698 **SECTION 15. Equal Employment Opportunity.**

699 15.1 The Company shall adhere to equal employment practices within the  
700 City of Austin, and to all federal, state, and local rules and laws pertaining to  
701 discrimination, equal employment, and affirmative action.

702 15.2 The Company shall provide equal employment opportunity to minorities,  
703 women and the physically disabled at all levels and in all phases of operation. In  
704 addition, the Company shall promulgate an affirmative action policy which shall  
705 cover, in addition to employment: training, the granting of internships, purchasing,  
706 and the employment of subcontractors.

707 15.3 Company shall make all reasonable efforts to comply with its affirmative  
708 action commitments.

709 **SECTION 16. Forfeiture and Termination.**

710 16.1 In addition to all other rights and powers retained by the City under this  
711 Franchise or otherwise, the City reserves the right to declare this Franchise forfeited

712 and to terminate the Franchise and all rights and privileges of the Company  
713 hereunder in the event of a material breach of its terms and conditions. A material  
714 breach by the Company shall include, but shall not be limited to, the following:

715 (A) Failure on more than three (3) occasions to pay when due the  
716 Franchise Fee prescribed by Section 12 hereof;

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

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

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

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

728 16.2 The foregoing shall not constitute a material breach if the violation  
729 occurs without fault of the Company or of its employees or occurs as a result of  
730 circumstances beyond its control. Company shall not be excused by mere  
731 economic hardship or by malfeasance or the malfeasance of its directors, officers, or  
732 employees.

733 16.3 In order for the City to declare forfeiture, the City shall make a written  
734 demand that the Company comply with any such provision, rule, order, or  
735 determination under or pursuant to this Franchise. If the violation by the Company  
736 continues for a period of 45 days following such written demand without written  
737 proof that corrective action has been taken or is being actively and expeditiously  
738 pursued to completion, Council may take under consideration the issue of  
739 termination of the Franchise. The City shall cause to be served upon the Company, at  
740 least 20 days prior to the date of such a Council meeting, a written notice of intent to  
741 request such termination and the time and place of the meeting. Public notice shall be  
742 given of the meeting and issue which the Council is to consider.

743 16.4 The Council shall hear and consider the issue, shall hear any person  
744 interested therein, and shall determine, in its discretion, whether or not any violation

745 by the Company has occurred.

746 16.5 If the Council shall determine that the violation by the Company was  
747 the fault of the Company and within its control, the Council may declare the  
748 Franchise of the Company forfeited and terminated, or the Council may grant to  
749 Company a period of time for compliance. Nothing herein shall be deemed a waiver  
750 of the Company's right to pursue all available legal remedies.

751 **SECTION 17. Change of Control.**

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

759 **SECTION 18. Receivership and Bankruptcy.**

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

- 766 (A) Within 120 days after his or her election or appointment, such  
767 receiver or trustee shall have fully complied with all the provisions of  
768 this Franchise and remedied all defaults thereunder; or  
769  
770 (B) Such receiver or trustee, within 120 days, shall have executed an  
771 agreement, duly approved by the court having jurisdiction, whereby the  
772 receiver or trustee assumes and agrees to be bound by each and every  
773 provision of this Franchise granted to the Company.

774 **SECTION 19. Purchase.**

775 19.1 The City shall have the option to purchase the Company's Distribution  
776 System within the City of Austin at any time during the term of this  
777 Franchise.

778 19.2 The following are conditions precedent to the exercise of City’s option to  
779 purchase:

- 780 (A) The City must provide the Company with written notice of the  
781 City’s intention to exercise its option to purchase the Company’s  
782 property devoted to the Distribution System.
- 783 (B) Within 90 days after receipt of the notice of intention to exercise  
784 its option, the Company shall make a written offer (“Offer”)  
785 stating the cash price at which the Company is willing to close the  
786 purchase and sale of the Distribution System. Within 90 days of  
787 the receipt of the Offer, the City must give written notice to the  
788 Company (a) that the Offer is rejected and the appraisal procedures  
789 set forth in Section 19.3 are to be initiated, (b) that the City agrees  
790 to purchase the Distribution System for cash at the cash price  
791 stated in the Offer, or (c) that the City withdraws its notice of intent  
792 to exercise its purchase option.
- 793 (C) If the City agrees to purchase the Distribution System at the price  
794 stated in Company’s Offer, the parties shall negotiate the terms of  
795 a definitive purchase agreement in good faith. Closing shall take  
796 place within 30 days after satisfaction of all conditions precedent  
797 to the sale in the purchase agreement are satisfied, or at such other  
798 time upon which the parties may mutually agree.

799 19.3 Upon initiation of the appraisal procedures set forth in this section, the  
800 Company and the City shall each appoint an appraiser within 30 days after delivery  
801 of the written election for appraisal under Section 19.2. The appraisers shall be  
802 experienced in the evaluation of gas distribution systems, and neither appraiser shall  
803 have worked for either the City or the Company within five (5) years of the date of  
804 appointment or be otherwise disqualified from rendering independent judgment. The  
805 City and the Company shall each immediately provide the name, mailing address  
806 and telephone number of its appointee to the other party. The appointed appraisers  
807 shall agree on the appointment of a third appraiser with like qualifications to be  
808 engaged if required pursuant Section 19.4 below.

- 809 (A) Within 30 days after appointment of the appraisers and after no  
810 less than fifteen (15) days’ written notice to the parties, the  
811 appraisers shall commence their determination of the appraisal  
812 value of the Distribution System.

813 (B) Within 90 days after the commencement of the appraisal process,  
814 the appraisers shall each file with the City and the Company a  
815 written proposed decision on the appraised value, including  
816 detailed written findings explaining the basis of the proposed  
817 valuation. The factors for the appraisers to consider in arriving at  
818 a fair market value for the Company’s facilities shall include, but  
819 not be limited to, the following:

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

827 19.4 If there is a greater than five percent difference between the proposed  
828 valuations in the Parties appointed appraisers’ written proposed decisions, then  
829 within 45 days after the submission of the proposed decisions, the third appraiser  
830 must file with the City and the Company a written proposed decision on the  
831 appraised value, including detailed written findings explaining the basis of the  
832 proposed valuation and including the factors detailed in Section 19.3 (B) above. The  
833 final appraised value shall be equal to the average of the three proposed valuations.  
834 However, if any one of the three proposed valuations is higher or lower than one or  
835 both of the other two proposed valuations by more than 10 percent, the final  
836 appraised value shall be equal to the average of the other two proposed valuations.

837 19.5 Closing shall be held at a mutually agreeable location 120 days after  
838 the appraisers file the final written proposed decision. At the closing, the City shall  
839 pay the cash price stated in the final appraisal value.

840 19.6 The time periods specified in this section may be modified or extended  
841 only by a writing duly authorized and executed by both the City and the Company.  
842 Such authorization shall not be unreasonably withheld, provided that any such  
843 request shall be made in writing and received by the other party within a reasonable  
844 time prior to the expiration of the time period sought to be extended.

845 19.7 In the event the City decides not to purchase the Company’s Distribution

846 System or the City is financially unable to close the purchase of the Company's  
847 Distribution System within the time set forth herein, the City's purchase right shall be  
848 deemed waived and the Company may recover from Customers its costs and expenses  
849 expended in preparing for the purchase transaction, subject to the City's review of such  
850 costs and expenses for reasonableness.

851 **SECTION 20. Severability.**

852 20.1 If any word, phrase or one or more provisions of this Franchise are held  
853 to be void, voidable, or unenforceable by a court of competent jurisdiction in a final  
854 judicial action, the word(s), phrase(s), or provision(s) are severed from the remaining  
855 provisions of the Franchise. Such a word, phrase, or provision shall not affect the  
856 legality, validity, or constitutionality of the remaining portions of this Franchise. The  
857 City and the Company enter into this Franchise and each of its provisions regardless  
858 of any provision that is held to be illegal, invalid, or unconstitutional, provided,  
859 however, that the City and the Company each reserves the right to terminate the  
860 agreement authorized by this Franchise Ordinance if any provision set out herein is  
861 held to be illegal, invalid or unconstitutional.

862 20.2 Nothing herein contained shall be construed as granting any exclusive  
863 franchise or right.

864 **SECTION 21. Interpretation.**

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

869 **SECTION 22. Dispute Resolution.**

870 22.1 If a dispute arises out of or related to the Franchise, or the breach thereof,  
871 the parties agree to negotiate prior to prosecuting a suit for damages. However, this  
872 section does not prohibit the filing of a lawsuit to toll the running of a statute of  
873 limitations or to seek injunctive relief. Either party may make a written request for a  
874 meeting between representatives of each party within 14 calendar days after receipt  
875 of the request or such later period as agreed by the parties. Each party shall include,  
876 at a minimum, one senior level individual with decision-making authority regarding  
877 the dispute. The purpose of this and any subsequent meeting is to attempt, in good  
878 faith, to negotiate resolution of the dispute. If within 30 calendar days after such

879 meeting, the parties have not succeeded in negotiating a resolution of the dispute,  
880 they will proceed directly to mediation as described below. Negotiation may be  
881 waived by a written agreement signed by both parties, in which event the parties may  
882 proceed directly to mediation as described below.

883 22.2 If the efforts to resolve the dispute through negotiation fail, or the parties  
884 waive the negotiation process, the parties may select, within 30 calendar days, a  
885 mediator trained in mediation skills to assist with resolution of the dispute. Should  
886 they choose this option, the City and the Company agree to act in good faith in the  
887 selection of the mediator and to give consideration to qualified individuals nominated to  
888 act as mediator. Nothing in the Franchise prevents the parties from relying on the skills  
889 of a person who is trained in the subject matter of the dispute or a contract interpretation  
890 expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of  
891 the mediation process, the mediator shall be selected by the Travis County Dispute  
892 Resolution Center (DRC).

893 22.3 The parties agree to participate in mediation in good faith for up to 30  
894 calendar days from the date of the first mediation session. The City and the  
895 Company will equally share costs of the mediator selected to mediate the dispute.

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

900 **PART 3.** If any of the terms of this ordinance conflict with the City Charter, the terms of  
901 the Charter prevail.

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

904 **PART 5.** This ordinance takes effect on \_\_\_\_\_, 2026.

905 **PASSED AND APPROVED**

906 \_\_\_\_\_, 2026 § \_\_\_\_\_  
907 § \_\_\_\_\_  
908 § \_\_\_\_\_

Kirk Watson  
Mayor

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**APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
Deborah Thomas Erika Brady  
City Attorney City Clerk

DRAFT