

ORDINANCE NO. 4-2023

AN ORDINANCE GRANTING TO UNIVERSAL NATURAL GAS, LLC (d/b/a UNIVERSAL NATURAL GAS, INC.) AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC RIGHTS-OF-WAY TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BONNEY, TEXAS FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CUSTOMERS AND THE PUBLIC GENERALLY IN THE CITY; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR ASSIGNMENT, SALE OR LEASE OF THE FRANCHISE; PROVIDING FOR USE AND REPAIR OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR REGULATION OF SERVICE; ESTABLISHING DEPTH OF PIPELINES; ESTABLISHING RIGHTS AND DUTIES IN THE MOVEMENT AND ALTERATION OF PIPELINES; PROVIDING FOR INDEMNIFICATION OF THE CITY OF BONNEY; PROVIDING FOR INSPECTION OF GRANTEE'S RECORDS; REQUIRING GRANTEE TO PAY A FRANCHISE FEE; PROVIDING FOR CONDITIONS OF THE FRANCHISE; PROVIDING FOR CONSTRUCTION OF THIS ORDINANCE UPON THE INVALIDITY OF ANY PART THEREOF; PROVIDING FOR ACCEPTANCE OF THIS FRANCHISE BY GRANTEE AND BOTH AN EFFECTIVE AND AN OPERATIVE DATE THEREOF; REPEALING ALL OTHER ORDINANCES DIRECTLY IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PRESCRIBING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF ALDERPERSONS OF THE VILLAGE OF BONNEY, TEXAS:

SECTION 1. DEFINITIONS

As used in this Ordinance, the following words and phrases shall have the following meanings:

- A. "Affiliate" means any person or entity that directly or indirectly owns or controls, that is directly or indirectly owned or controlled by, or that is under common ownership or control with Grantee.
- B. "City" means the Village of Bonney, in Brazoria County, Texas, a municipal corporation, hereinafter also referred to as "Grantor". Any use herein of the term "City" shall also mean "Village" in any other context, for example in the terms "City Secretary," "City Engineer," "City Manager," or "City Attorney."
- C. "City Secretary" means the City Secretary of the City or other such officer of the City designated to serve as the filing officer for official documents and records of the City.
- D. "City Council" means the Board of Alderpersons of the City as the governing body of the City.

- E. "City Engineer" means the City Engineer of the City, the Public Works Director of the City, or such other officer of the City designated to approve engineering plans and designs for construction within Public Rights-of-Way.
- F. "City Manager" means the City Manager of the City, the City Administrator of the City, or such other chief administrative officer of the City designated to hear appeals from the decisions of other City officers. In the absence or vacancy of the City Manager, the Mayor shall have all the duties and authority of the City Manager.
- G. "Customer" means any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, or public or private entity located within the municipal corporate limits of the City and serviced by the Grantee through any use of the Public Rights-of-Way.
- H. "Franchise Fee" or "Franchise Fees" shall mean the sum of fees to be paid to the City by Grantee under **SECTION 12** of this Ordinance.
- I. "Franchise Agreement" refers to this Ordinance.
- J. "Gas Sales" means the sale of natural gas to Grantee's Customers located within the corporate limits of the City by use of the System.
- K. "Gas Transportation" means the transportation of Transport Gas for redelivery to Customers with re-delivery points located within the corporate limits of the City.
- L. "Grantee" shall mean UNIVERSAL NATURAL GAS, LLC, a Texas limited liability company, and its successors and assigns.
- M. "Gross Receipts from Gas Sales" shall constitute and include Grantee's total receipts from Gas Sales to Grantee's Customers within the corporate limits of the City. Grantee's Gross Receipts from Gas Sales shall also include: amounts collected from customers for fees paid to the City pursuant to this Ordinance, for contributions in aid of construction ("CIAC"), and for the following "miscellaneous charges" – charges to connect, disconnect, or reconnect gas within the City and charges to handle returned checks from consumers within the City, and for State gross receipts fees, and all charges and fees described in Exhibit "A" hereto.

Grantee's Gross Receipts from Gas Sales subject to the Franchise Fee shall specifically exclude, without limitation:

- [1] receipts from gas sales or services to Customers located at delivery points outside the corporate limits of the City;
- [2] sales of gas billed but not collected or received by the Grantee;
- [3] the revenue of any Affiliate of Grantee, to the extent that such revenue is also included in Gross Receipts from Gas Sales of the Grantee;

- [4] sales taxes paid to the City;
- [5] any interest or investment income earned by the Grantee; and
- [6] 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.

N. "Gross Receipts from Gas Transportation" shall constitute and include Grantee's total receipts from its transportation of Transport Gas, consisting of receipts from cost of service. Grantee's Gross Receipts from Gas Transportation shall also include: amounts collected from customers for fees paid to the City pursuant to this Ordinance, CIAC, and the following "miscellaneous charges" – charges to connect, disconnect, or reconnect gas within the City and charges to handle returned checks from consumers within the City, and State gross receipts fees, and all charges and fees described in Exhibit "A" hereto.

Grantee's Gross Receipts from Gas Transportation subject to the Franchise Fee shall specifically exclude, without limitation:

- [1] receipts from gas transportation services to Customers located at delivery points outside the corporate limits of the City;
- [2] fees for gas transportation services billed but not collected or received by the Grantee;
- [3] the revenue of any Person including, without limitation, an Affiliate of Grantee, to the extent that such revenue is also included in Gross Sales Revenues of the Grantee;
- [4] sales taxes paid to the City;
- [5] any interest or investment income earned by the Grantee; and
- [6] 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.

O. "Permit" means an authorization from the City to Grantee:

- [1] for the opening of the streets, avenues, alleys, other public places or Public Ways shown on maps or plans submitted by Grantee to the City Engineer, showing the streets, avenues, alleys, and other public places and the locations thereon wherein Grantee proposes to construct or install new mains, pipes, or other equipment or facilities of any nature;
- [2] for the new construction or laying of the new mains, pipes, or other equipment or facilities of any nature by Grantee as shown on such maps or plans; or

- [3] to perform any work on Grantee's facilities or the System within the Public Ways or other City rights-of-way.
- [4] A Permit is hereby required for anything described above in the definition of "Permit."
- [5] A This Franchise Agreement is not a Permit and does not satisfy the requirement of a Permit.
- P. "Person" means an individual, corporation, general or limited partnership, limited liability company, trust, association, or other business or legal entity.
- Q. "Public Right(s)-of-Way" and "Public Way" mean the present and future streets, medians, avenues, boulevards, parkways, roads, lanes, alleys, bridges, sidewalks, easements, highways, public utility easements, viaducts, bridges across water ways, and other public places within the municipal corporate limits of the City, whether dedicated or not, that are owned or controlled by the City and are available for Grantee's use.
- R. "Right-of-Way Ordinance" or "Right-of-Way Management Ordinance" means all ordinances of the City, whether now existing or later enacted or amended, regulating the use of any Public Right-of-Way subject to the City's jurisdiction, including but not limited to this Ordinance.
- S. "System" means Grantee's system of mains, pipelines, conduits, valves, feeders, regulator stations, laterals, service lines, measuring devices, and all other necessary plants, attachments, land, structures, facilities and appurtenances for the purpose of selling, storing, supplying, conveying, transmitting, distributing, and/or transporting natural gas and any gas, including the equivalent substitutes, for all other lawful purposes in, through, upon, under, and along the present and future streets, avenues, alleys, bridges, sidewalks, easements, highways, and any other public place within the municipal corporate limits of the City.
- T. "Transport Gas" means gas owned or controlled by a user or its designee (i.e., gas that is purchased or otherwise acquired by a user from someone other than Grantee) and delivered by such user or its designee to Grantee at a point on Grantee's System, such point of delivery to be defined by Grantee, and carried, delivered or transported through Grantee's System at a point of redelivery within the municipal corporate limits of the City by Grantee to the user for a fee.

## SECTION 2. GRANT OF FRANCHISE

- A. Subject to the terms and conditions of this Ordinance, the Grantor hereby grants to Grantee, its successors and assigns and Affiliates, for the term of twenty-five (25) years from the Effective Date of this Ordinance, the NON-EXCLUSIVE right to enter upon the Public Rights-of-Way to construct, install, extend, remove, replace, abandon, operate and maintain a System along, across, over and under the Public Rights-of-Way for the privilege of transporting, distributing and/or selling gas to Customers and the public generally within the municipal corporate limits of the City, and including any territory

that the City may hereafter annex, acquire, purchase; and to distribute, sell, store, supply, transport, carry and/or convey natural gas and any gas through Grantee's System in the City to other cities, towns, communities and areas outside the City and to inhabitants thereof, for the full term of this Ordinance.

- B. The Ordinance shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of Grantor as well as Grantee.
- C. The Franchise granted by this Ordinance shall in no way affect or impair the present or future rights, obligations, or remedies of the City or Grantee under the Texas Gas Utility Regulatory Act, as amended. This is a non-exclusive franchise.
- D. All of the regulations and activities required by this Ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public.

### SECTION 3. FRANCHISE ASSIGNMENT, SALE OR LEASE

This Franchise Agreement may not be transferred or assigned to any non-Affiliate of Grantee, in whole or in part, without the written consent of the City, which may be administratively approved by the Mayor or City Manager. As such, Grantee shall notify Grantor of: the name of the buyer, transferee or assignee; the type of service(s) intended to be provided through the facilities of such buyer, transferee or assignee; and the name, mailing address, and telephone number of a contact person associated with such buyer, transferee or assignee. Notice shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the City at the address and in the manner herein provided.

Notwithstanding the foregoing, City consent is not required when an assignment, transfer, merger or consolidation is between entities that control, are controlled by, or are under common control with Grantee. However, Grantee must give the City reasonable notice of any such assignment, transfer, merger or consolidation in the same manner required above for non-Affiliate transfers or assignments.

### SECTION 4. USE AND REPAIR OF THE PUBLIC RIGHTS-OF-WAY; PERMIT PROCESS

- A. Grantee and its contractors shall give Grantor reasonable notice, of the dates, location and nature of all work to be performed on its System within the Public Rights-of-Way. This section does not excuse Grantee from obtaining any required Permit.
- B. Grantee's System shall be of sound material and good quality, and shall be laid so that it will not interfere with the artificial drainage of the City or its underground fixtures, or with navigation in or the natural drainage of any stream. Grantee's System shall be erected, placed, extended, repaired, laid or otherwise installed, operated and maintained in such a manner as will, consistent with reasonable necessity, cause the least interference with other existing public uses of the Public Rights-of-Way, including but not limited to existing sewer, water, pipes, electricity, telephone wires, public or private drains, and any other facilities within the City and also including those utilities granted by franchise or permit by the City. Within the Public Rights-of-Way, the location and route of the

System shall be subject to the reasonable and proper regulation, direction and control of the City or the City official to whom such duties have been delegated. In order to initiate any work on existing Grantee facilities or the System, whether existing or new, within the Public Rights-of-Way, Grantee must obtain a Permit under the procedure enumerated in the City's Right-of-Way Management Ordinance and any other applicable Ordinance.

Except in the case of an emergency, within the City's corporate limits, when Grantee desires to lay, construct, install, repair, or replace any existing mains, pipes, or other equipment or facilities hereunder, and before commencing such work, it shall submit to the City Engineer, or other proper City authority, an application for a Permit. That application shall include a map or plan showing the streets, avenues, alleys, and other public places and the locations thereon wherein it proposes to perform such work, the specifications for the work, and such other information as the City Engineer or other proper City authority shall require. The City Engineer, or other proper City authority, shall by written notice, either issue or deny the Permit to Grantee. Approval by the City Engineer, or other proper City authority, shall constitute the Permit to Grantee for the work described in the granted Permit, including but not limited to the opening of the streets, avenues, alleys and other public places shown on the map or plan, to the extent stated in the Permit. In the event that the Permit is denied, the City Engineer, or other proper City authority, shall advise Grantee of the reasons for the denial and all necessary steps to secure approval of the Permit. Grantee shall have the right to immediately appeal the non-issuance of the Permit to the City Manager, and if not approved within ten (10) calendar days by the City Manager, Grantee may appeal to the City Council and be heard at a public meeting held in compliance with applicable law. If the City Council fails to act on the appeal within thirty (30) calendar days after the appeal to the City Council is filed with the City, then the appeal will be deemed to be denied unless agreed otherwise in writing by Grantee and the City. Appeal of any decision made by the City Council shall be made to the District Court of Brazoria County, Texas, and an appeal from any decision of the District Court shall be as in all other civil actions.

C. Permit Fees.

- [1] The applicable permit fee shall be paid at the time the application for a Permit is due or is filed, whichever is earlier. The amount of the permit fee shall be as provided in the City's Fee Ordinance and shall include Additional Fees as defined in the Fee Ordinance, regardless whether any other fee is specified therein.
- [2] In the event of emergency work commenced without a Permit as authorized by this Ordinance, Grantee shall still be liable to the City for the fees that would have been due under this Ordinance or the Fee Ordinance if a Permit had been required.

D. This Ordinance shall constitute a permit for Grantee to park vehicles in the Public Rights-of-Way in a safe manner for no longer than necessary for the installation, replacement, abandonment, operation, or maintenance of Grantee's System.

E. No permit shall be required to initiate emergency repairs, including repairing gas leaks or as may be required by the rules and regulations of the Railroad Commission of Texas and the Texas One-Call Statute (Texas Utilities Code, Chapter 251, and any successor statutes). Grantee shall give the City telephone and e-mail notice of the initiation of emergency repairs as soon as practicable under the circumstances, but no later than 24 hours after initiation of such work, and shall seek a permit pursuant to the City's Right-of-Way Management Ordinance following completion of the work. If in conducting such emergency repair work there is anticipated or actual blockage of traffic lanes on any major thoroughfares or in public school zones that will be longer than 15 minutes, Grantee shall give the City telephone and email notice immediately upon initiation of such work.

F.

After completion, after any pause of 14 consecutive days, or after any pauses totalling 30 days, of any work in the Public Rights-of-Way: (1) Grantee shall, with due diligence and dispatch, restore the Public Rights-of-Way and all affected City property to the condition they were in before the work; and (2) Grantee shall also comply with the City's Right-of-Way Management Ordinance and all other City ordinances governing requirements, time periods, and standards relating to performing work in the Public Rights-of-Way, to place the Public Rights-of-Way in a condition in compliance with the Grantor's reasonable standards and specifications. No Public Right-of-Way shall be encumbered for a longer period than shall be necessary to execute the work.

G. Grantee shall keep current and up-to-date maps showing the physical location of Grantee's System and make the maps available for inspection by the Grantor at no cost during normal work hours.

#### SECTION 5. REGULATION OF SERVICE

The System of Grantee shall at all times be installed, operated and maintained in accordance with accepted good practice, and in accordance with all State, Federal and City regulations, and in such condition as will enable the Grantee to furnish adequate and continuous service as required by the orders, rules and regulations of the Railroad Commission of Texas or other regulatory authority having jurisdiction. The requirements set forth in this Section shall not relieve Grantee of any other obligations set forth herein.

#### SECTION 6. DEPTH OF PIPELINES

After the Effective Date of this franchise, Grantee's main or lateral lines installed or replaced in Public Rights-of-Way shall be installed or replaced at depths which comply with all applicable state and federal rules, regulations and company policies establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. Depth shall be measured from the lower of existing grade or proposed future grade as set forth on plans or other specifications existing at the time such lines are installed or replaced.

## SECTION 7. DUTY TO MOVE OR ALTER LINES

- A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the Grantor, along, across, over or under the Public Rights-of-Way. In permitting such work to be done, the Grantor shall be liable to the Grantee for any damage to Grantee's pipelines and facilities caused by Grantor or its agents' or contractors' negligence.
- B. Grantee shall, upon the written request of Grantor, relocate, or modify its System's facilities within Public Rights-of-Way at Grantee's own expense, exclusive of any facilities within the System installed for service directly to the City, whenever such relocation or modification shall be reasonably necessary to accommodate a street widening or traffic lane adjustment project or any other public works project by the City affecting the Public Right-of-Way in which the Facilities are located, including water, sewer, drainage and change of grade projects by City.
- C. When Grantee is required by Grantor to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets and alleys by the Grantor, and Grantee is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Grantee as a result of such removal or relocation, and such reimbursement is required to be handled through Grantor, then Grantee's costs and expenses shall be included in any application by Grantor for reimbursement, if Grantee provides the Grantor its appropriate cost and expense documentation prior to the filing of the application. Grantor shall provide reasonable notice to Grantee of the deadline for Grantee to submit documentation of the costs and expenses of such relocation to Grantor.
- D. When Grantee is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by the Grantor without reimbursement, Grantee shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 of the Texas Utilities Code or any other applicable law or regulations.
- E. If Grantor shall require the Grantee to adapt or conform its System or in any way to alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than the Grantor, to use the Public Rights-of-Way, the Grantee shall be reimbursed by the person, firm corporation or entity desiring or occasioning such change for any and all loss, cost or expense occasioned thereby.

## SECTION 8. INDEMNIFICATION

**GRANTEE AND ITS SUCCESSORS AND ASSIGNS SHALL INDEMNIFY, SAVE, DEFEND, PROTECT AND HOLD CITY AND ITS AGENTS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, EMPLOYEES, CONTRACTORS, ELECTED AND NON-ELECTED OFFICIALS AND OFFICERS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, DEMANDS, COSTS, CAUSES OF**



**ACTION, SETTLEMENTS, AWARDS, PENALTIES, FEES ASSESSMENTS, FINES, CHARGES, DEMANDS, LIENS, PUNITIVE DAMAGES, ATTORNEY FEES AND JUDGMENTS OF EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT (COLLECTIVELY "CLAIMS") ARISING OUT OF THE ACTS OR OMISSIONS OF THE GRANTEE, ITS SERVANTS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR ANY OTHER PERSON OR ENTITY IN CONNECTION WITH THE GRANTEE AND THE OPERATION OF THIS FRANCHISE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY CLAIMS ARISING FROM TORT, PERSONAL INJURY, DEATH, PROPERTY DAMAGE OR NUISANCE, PROVIDED HOWEVER, THAT IN THE EVENT OF SUCH CLAIM OR CLAIMS BEING PROSECUTED AGAINST THE CITY, GRANTEE SHALL HAVE THE RIGHT TO DEFEND AGAINST THE SAME, AND TO SETTLE OR DISCHARGE SAME IN SUCH MANNER AS IT MAY SEE FIT, AND THE CITY SHALL GIVE PROMPT WRITTEN NOTICE TO GRANTEE OF THE PRESENTATION OR PROSECUTION OF SUCH CLAIMS. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY CLAIMS OR LIABILITY RESULTING FROM THE ACTS, OMISSIONS, OR NEGLIGENCE OF THE CITY, ITS AGENTS, LEGAL REPRESENTATIVES, EMPLOYEES, CONTRACTORS, ELECTED AND NON-ELECTED OFFICIALS AND OFFICERS OR ANY OTHER PERSON OR ENTITY IN CONNECTION WITH THE CITY.**

#### **SECTION 9. GRANTEE'S RATES, RULES AND REGULATIONS**

The Grantee shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its facilities, the sale of its gas and the conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Texas, with the orders, rules or regulations of the Railroad Commission of Texas or other regulatory authority having jurisdiction, nor with the ordinances, and regulations of the Grantor insofar as they are consistent with the jurisdiction of the Railroad Commission of Texas or such other regulatory authority.

Grantee shall supply natural gas and provide regulated services at the rates and under the terms and conditions specified by such rules and any lawful tariffs filed with the Railroad Commission of Texas. Such tariffs are available on the Railroad Commission of Texas's website, and Grantee represents that its current tariffs are attached to this Franchise Agreement as Exhibit A. For the duration of this Ordinance, Grantee shall maintain on file with City copies of its current tariffs, schedules of rates and charges, customer service provisions, and line extensions policies, all as amended from time to time..

## SECTION 10. INSPECTION OF RECORDS

Grantee shall permit Grantor or its agents to inspect, examine and audit, during regular business hours, the books, papers and records kept by Grantee in the ordinary course of business and pertaining to the natural gas business carried on by it in the City, such as plats, maps and atlases identifying Grantee's pipelines in the City, and the books and records necessary to verify the franchise fee payment provided for in Section 11 hereof. Notwithstanding the obligation herein, Grantee shall have the right to the reasonable protection of proprietary information and to provide redacted documents or require Grantor or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Grantee but which do not unreasonably frustrate the purposes of this Section.

## SECTION 11. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE

A. As full consideration for the rights and privileges conferred by this Ordinance, Grantee agrees to pay Grantor as follows and to perform all other obligations of Grantee under this franchise agreement:

- [1] Grantee shall collect the Franchise Fee from its Customers and shall pay Grantor a Franchise Fee the sum of which is equal to Five Percent (5%) of the Gross Receipts received by Grantee, per billing period, from the transportation and sale of natural gas for consumption within the municipal corporate limits of the City. The Franchise Fee shall include only Gross Receipts from Gas Sales to Customers located in the City; and Gross Receipts from Gas Transportation to Transport Gas Customers with re-delivery points located in the City. All sums due from Grantee shall be in lieu of all other franchise fees, licenses, or occupational taxes, which may be levied or attempted to be levied on Grantee by the City.
- [2] Grantee shall pay such Franchise Fee collected from its Customers to the Grantor under the terms of this Ordinance, based upon meters read on or after the Effective Date of this Ordinance. During the term of this Ordinance, Grantee shall collect from its Customers and pay the City on a quarterly basis, on or before the forty-fifth (45<sup>th</sup>) day following the end of each calendar quarter. Grantee shall include with the Franchise Fee payment a statement showing its collections of Gross Receipts from Gas Sales and Gross Receipts from Gas Transportation in the City, including the calculation of the Franchise Fee for the subject time period. Collection and payment of Franchise Fee shall be final as to both parties unless questioned by written notice provided by one party to the other within four years after payment thereof has been made.
- [3] Any payments that are received after 5:00 P.M. on the due date constitute late payments. Late payments shall accrue interest from such due date until payment is received by the Grantor. Interest shall be calculated in accordance with the interest rate for customer deposits established in accordance with Texas Utilities Code Section 183.003 for the time period involved.

- [4] It is expressly agreed that the Franchise Fee payments shall be in lieu of any payments for the right to use the Public Ways or other public rights-of-way of the City, including expressly the charge permitted to be levied by the Texas Tax Code Sections 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. All fees associated with obtaining a permit shall be dictated by the City's ordinances. The Franchise Fee shall be in lieu of and accepted as payment of all of Grantee's obligations to pay all other franchise fees, licenses, easement or occupation taxes, levies, exactions, rentals, street-cut fees, inspection fees, right of way inspection fees, franchise fees, easement taxes, or charges of any kind whatsoever which may be levied or attempted to be levied in general by the City for the use of City's Public Rights-of-Way and other rights-of-way, with the sole exception of sales taxes, ad valorem taxes and special assessments which are made without reference to or dependence upon Grantee's franchise or occupancy of the streets and public right of way, e.g., special assessment paving liens.
- [5] However, regardless of any provision, the Franchise Fee does not cover any of the following:
- [a] any fees to the City for a Permit, including but not limited to the cost of the City Engineer to review any application for a Permit, and Grantee shall pay the City the applicable permit fees at the time of applying for a Permit; and
  - [b] any damages to any City property or other public property of any nature, and Grantee shall be responsible for promptly repairing such damages, in addition to paying the Franchise Fee.
- [6] Grantor may conduct an audit or other inquiry or may pursue a cause of action in relation to the payment of the franchise fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than four (4) years before the commencement of such audit, inquiry, or pursuit of a cause of action ("Audit Period"). Each party shall bear its own costs of any such audit or inquiry. Upon receipt of a written request from the Grantor, all books and records related to Grantee's operations under this Ordinance shall be made available for inspection and copying no later than thirty (30) days from receipt of such request. If an audit determines underpayments or overpayments occurred during the Audit Period, Grantee shall pay such underpayments and may deduct such overpayments from the succeeding Franchise Fee payment with interest until paid in full at a rate equal to the return on equity granted to Grantee in its most recent proceeding setting rates applicable to customers within the corporate limits of the City.

The rights, privileges, and franchises granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time as it may see fit, like privileges, rights, and franchises to any other person or corporation for the purpose of furnishing gas in the City.

Unless expressly set forth herein, or otherwise provided by law, by accepting this Ordinance, Grantee does not agree to be responsible for the payment of franchise fees other than as expressly set forth herein, or for the payment of franchise fees owed to the City by any other entity, corporation or firm.

## SECTION 12. CONDITIONS OF FRANCHISE

- a. This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, regulations, and ordinances of Grantor now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.
- b. To the extent that all or any other existing ordinance shall conflict with any provision of this Ordinance, this Ordinance shall prevail upon passage, adoption and acceptance of this Ordinance.
- c. In addition to all other rights, powers and remedies retained by the Grantee and Grantor under this Franchise Agreement or otherwise, in the event a dispute arises regarding the obligations under this Franchise Agreement, the Grantor shall give written notice specifying the nature of the dispute to the Grantee. The Grantee shall have 30 (thirty) days from receipt of such notice to remedy the dispute. If the cure cannot reasonably be completed within such 30-day period, commercially reasonable best efforts to complete such cure shall be used. In the event a remedy does not occur, the Grantor shall give 20 days' written notice of intent to pursue additional judicial and/or legal remedies to the Grantee, including but not limited to injunctions to prevent breaches of this Franchise Agreement and to enforce specifically the terms and provisions of this Franchise Agreement, or termination of this Franchise Agreement. Any termination under this provision shall be by ordinance adopted by City Council. Actions taken by Grantee in order to comply with then-current laws and regulations shall not be considered grounds for a dispute hereunder. Nothing herein shall be construed to limit Grantee's or Grantor's right to seek judicial determination of a breach of this Franchise Agreement.
- d. Cumulative Remedies. No Election of Remedies. All rights and remedies in favor of the City or against any person other than the City under this agreement or any other source are cumulative. The pursuit or receipt by the City of any one or more rights or remedies shall not constitute an election of remedies, and shall not prevent the City from pursuing and receiving any and all other rights and remedies.

## SECTION 13. SEVERABILITY

If any portion, of whatever size, of this Ordinance shall be held to be invalid, it shall not affect the remaining portions of this Ordinance, which shall remain valid and effective as if such invalid provision did not exist, although the parties shall be entitled to a judicial interpretation or construction of this Ordinance to address the validation of such provision by minimal amendment thereof. Further, should any governmental body now or hereafter having jurisdiction determine that Grantee shall not be permitted to collect in whole or in part the compensation due Grantor by others for Transport Gas as set forth in Paragraph (2) of Subsection A of Section 11

of this Ordinance, Grantee shall thereafter have no obligation to make such payment to Grantor and Paragraph (2) of Subsection A of Section 11 shall be of no force and effect with regard to the sale of Transport Gas.

#### SECTION 14. NONWAIVER BY NONENFORCEMENT

The failure or omission of the City, upon one or more occasions, to enforce any right, obligation, or remedy under this Ordinance or any other law shall never be construed as a waiver of the City's rights to strictly enforce such right, obligation, or remedy, and the City may resume such strict enforcement without advance notice.

#### SECTION 15. NONWAIVER OF IMMUNITY

Nothing in this agreement or in any act, omission, or condition concerning this agreement or the subject matter hereof shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the City or its officers, agents, employees, or representatives of any nature.

#### SECTION 16. WHOLE AGREEMENT

This written agreement constitutes the entire agreement of the parties concerning the subject matter hereof. Furthermore, each party represents and warrants that it has neither received nor relied upon any written or oral statements, promises, or representations of any nature as an inducement to enter into this agreement, except for the statements written herein.

#### SECTION 17. EFFECTIVE DATE

This ordinance shall take effect and be in full force immediately upon the date of its final passage ("Effective Date").

#### SECTION 18. NOTICE OF ORDINANCE

Full text of Ordinance shall be published once, within fifteen (15) days following the first reading, in a newspaper of general circulation in the City, and the expense of such publication shall be borne by the prospective franchise holder.

#### SECTION 19. ACCEPTANCE BY GRANTEE

Grantee shall have thirty days from the execution of this Ordinance within which to file in the office of the City Secretary its consent to and written acceptance of the provisions and conditions of this Franchise Agreement.

#### SECTION 20. CONFLICTING TERMS

In the event any other ordinance or part thereof is directly in conflict with any provision herein, this ordinance shall govern and control.

## SECTION 21. NO WAIVER OF POWER

In granting this Franchise, the City does not waive its regulatory powers, nor any rights under the Constitution and laws, present and future, of the State of Texas, nor any of its rights under future ordinances which are not in conflict herewith. The enumeration of special duties required of the Grantee shall not be construed as a limitation of the powers and duties conferred upon the City by the Constitution or laws of the State of Texas, or any present or future ordinances; and the Grantee shall perform all duties required by of it, by any valid ordinances not in conflict herewith adopted by the City, and by the laws of the State of Texas.

## SECTION 22. CITY RESERVES POWER

The City retains exclusive control over its streets, including (without enumerating all of its powers and without limiting its other powers) the power to lay out, establish, open, alter, widen, lower, elevate, extend, grade, abandon, discontinue, abolish, close, sell, pave, supervise, maintain and improve all of its streets and to construct, maintain and repair sewer pipes, water mains, drainage systems and other public works within its streets. In the exercise of such powers, the City may, whenever it deems it to be necessary, require the Grantee to alter, lower, elevate, relocate, or remove its pipelines in any such street, as and when required by the City. Such alterations to the Grantee's systems shall be made at Grantee's expense, subject to the Grantee's right to recover such costs from the ratepayers within the City pursuant to Section 104.112 of the Texas Utilities Code.

## SECTION 23. VENUE

This Franchise Agreement is performable in Brazoria County, Texas and in the event of a dispute between such parties hereto, by agreement of such parties, venue shall be established in Brazoria County, Texas.

## SECTION 24. ANNEXATIONS

Grantor shall promptly notify Grantee in writing of areas newly annexed into or de-annexed from the corporate limits of Grantor, and Grantee shall update its records for the purpose of payment of franchise fees as soon as reasonably practicable after receiving such notice. Starting immediately after the end of the first full calendar quarter that begins after the City notifies Grantee of an annexation, Grantee shall begin collecting and paying the Franchise Fee according to the terms hereof for the newly annexed territories.

## SECTION 25. RENEWAL OF FRANCHISE

Upon expiration of the initial twenty-five (25) year term of this franchise, unless one of the parties provides written notice of termination to the other party hereto, this franchise shall be automatically renewed for up to five (5) successive terms, with each renewal term lasting for one (1) year. Either party may provide written notice of termination to the other party prior to the expiration of the then current original term or renewal term.

## SECTION 26. NOTICES

Any notice required or permitted to be given under the provisions of this agreement shall be in writing and shall be deemed received upon the earlier of the following: (1) actual receipt, regardless of the delivery method; (2) actual delivery to the address stated in this section, by hand delivery with a receipt for delivery signed by the addressee; (3) actual delivery to the address stated in this section by commercial courier, such as Federal Express or United Parcel Service, that provides tracking or proof of delivery; or (4) the deposit of the notice in the United States mail by certified or registered mail, postage prepaid, addressed as stated in this section. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the City: Village of Bonney  
Attn: Mayor or City Manager  
19025 FM 521  
Bonney, TX 77583

With a copy to:

Laurence E. Boyd  
Bonney Village Attorney  
P.O. Box 269  
Angleton, Texas 77516-269

To the Grantee: Universal Natural Gas, LLC (d/b/a Universal Natural Gas, Inc.)  
Attn: General Counsel  
9950 Woodloch Forest Drive, 22<sup>nd</sup> Floor  
The Woodlands, TX 77380

Any party may change the address to which notices and other communications hereunder are to be delivered by giving notice to the other party in the manner described herein.

#### SECTION 27. PROOF OF ABILITY TO PERFORM UNDER THIS FRANCHISE

At the City's request, the Grantee will provide a copy of its Annual Report to the City Manager each year as proof of its financial ability to perform the duties required by this franchise.

#### SECTION 28. INSURANCE

During the term hereof, the Grantee shall maintain one or more policies of general liability insurance having policy limits of not less than \$5,000,000.00 per occurrence. At the City's request, the Grantee will provide a certificate of insurance evidencing such coverage.

#### SECTION 29. IMPACT OF OTHER MUNICIPAL FRANCHISE AGREEMENTS

A. This section applies only if, after the Effective Date of this Franchise Agreement, Grantee enters into a new municipal franchise agreement or renews an existing municipal franchise agreement with another municipality that provides for a different method of calculation of franchise fees for use of the Public Rights-of-Way, which, if applied to the City, would result in a greater amount of franchise fees owed the City than under this Franchise Agreement. In the event of an occurrence as described in this section, City shall have the option to:

[1] Have Grantee select, within 30 days of the City's request, any or all portions of the Franchise Agreement with the other municipality or comparable provisions that, at Grantee's sole discretion, must be considered in conjunction with the different method of the calculation of franchise fees included in that other franchise agreement; and

[2] Modify this Franchise Agreement to include both the different method of calculation of franchise fee found in the franchise agreement with the other municipality and all of the other provisions identified by Grantee pursuant to subsection 25.A.1. above. In no event shall City be able to modify the franchise to include the different method of calculation of franchise fee found in the franchise agreement with the other municipality without this franchise also being modified to include all of the other provisions identified by Grantee pursuant to subsection 25.A.1.

B. City may not exercise the option provided in subsection 25.A.1. if any of the provisions that would be included in this Franchise Agreement are, in Company's sole opinion, inconsistent with or in any manner contrary to any then-current rule, regulation, ordinance, law, Code, or City Charter. In the event of a regulatory disallowance of the increase in franchise fees paid pursuant to City's exercise of its option pursuant to this section, then at any time after the regulatory authority's entry of an order disallowing recovery of the additional franchise fee expense in rates, Company shall have the right to cancel the modification of the franchise made pursuant to this section, and the terms of the Franchise Agreement shall immediately revert to those in place prior to City's exercise of its option under this section.

C. Notwithstanding any other provision of this franchise, should the City exercise the option provided in subsection 25.A.1., and then adopt any rule, regulation, ordinance, law, Code, or Charter that, in Grantee's sole opinion, is inconsistent with or in any manner contrary to the provisions included in this Franchise Agreement pursuant to subsection 25.A.1., then Grantee shall have the right to cancel all of the modifications to this Franchise Agreement made pursuant to subsection 25.A.1., and, effective as of the date of the City's adoption of the inconsistent provision, the terms of the Franchise Agreement shall revert to those in place prior to the City's exercise of its option under subsection 25.A.1. The provisions of this section shall apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, such as the timing of such payments.


### SECTION 30. COMPLIANCE WITH CHARTER AND ORDINANCES

Grantee's operations and activities within the Public Rights-of-Way in the City shall be subject to all City ordinances, including the City's Right-of-Way Management Ordinance, and the City's Charter, if any, unless otherwise in conflict with any federal or state laws or this Franchise Agreement. The City shall endeavor to provide Grantee with reasonable notice and opportunity



to review and comment upon any new or revised City laws that impact Grantee's use of the Public Rights-of-Way, but the failure to do so shall not affect the applicability of such laws to Grantee. Nothing herein shall be deemed a waiver, release or relinquishment of any right by either party to contest, appeal, or file suit with respect to any action or decision of the other party.

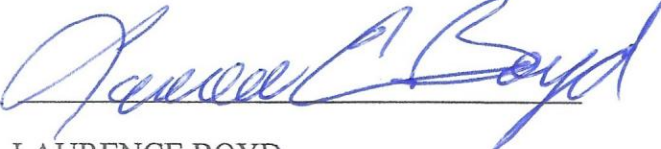
DULY PASSED AND APPROVED BY THE BOARD OF ALDERPERSONS OF  
THE CITY OF BONNEY, TEXAS, THIS 21 DAY OF March,  
2023.

  
\_\_\_\_\_  
RAYMOND CANTU  
MAYOR

ATTEST:

  
\_\_\_\_\_  
TERRY LACOMBE  
City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE BOYD  
City Attorney



The above and forgoing Franchise Ordinance and the grants, franchise, powers, rights, terms, and privileges thereto were accepted by Grantee this 3rd day of April, 2023.

UNIVERSAL NATURAL GAS, LLC

By: [Signature]

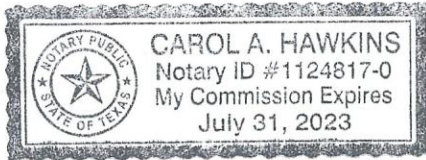
Name: BRAD ZARIN

Title: GENERAL COUNSEL

STATE OF Texas §

COUNTY OF Montgomery

This instrument was acknowledged before me on the 3rd day of April, 2023, by Brad Zarin, as General Counsel of UNIVERSAL NATURAL GAS, LLC, and who represents he has been given authority to sign this Agreement by and on behalf of said entity.



[Signature]

Notary Public, State of Texas

COUNTERSIGNED BY A SECOND AUTHORIZED OFFICER OF UNIVERSAL NATURAL GAS, LLC

By: [Signature]

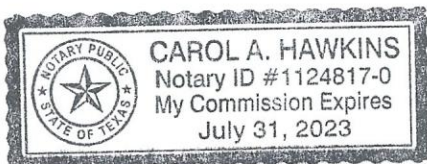
Name: Kevin McKenna

Title: Senior VP Business Development

STATE OF Texas §

COUNTY OF Montgomery

This instrument was acknowledged before me on the 3rd day of April, 2023, by Kevin McKenna, as SVP Business Development of UNIVERSAL NATURAL GAS, LLC, and who represents he has been given authority to sign this Agreement by and on behalf of said entity.



[Signature]

Notary Public, State of Texas

**EXHIBIT A**

**UNIVERSAL NATURAL GAS, LLC D/B/A UNIVERSAL NATURAL GAS, INC.  
RESIDENTIAL SERVICE  
RATE SCHEDULE RES**

**AVAILABILITY**

This schedule is available to residential consumers receiving natural gas service from UNIGAS (hereinafter called "Company").

**APPLICATION OF SCHEDULE**

The Company will provide distribution service for the delivery of gas supply through the Company's facilities to eligible residential customers residing in single family or multi-unit residential dwellings in which each unit requires a separate connection and meter. Gas supplied hereunder is for the individual use of the Consumer at one point of delivery and shall not be resold or shared with others. If the Consumer has a written contract with Company, the terms and provisions of such contract shall be controlling.

**BASE MONTHLY RATE**

For bills rendered on and after the effective date of this rate schedule, the monthly billing period rate for each customer receiving service under this rate schedule shall be the sum of the following:

Monthly Customer Charge:	\$25.43
Base Charge:	\$18.00
Interim Rate Adjustment:	\$7.43*
All Gas Consumed at:	\$3.14 per Mcf

**OTHER ADJUSTMENTS**

Cost of Gas Component: The basic rates for cost of service set forth above shall be increased by the amount of the Cost of Gas Component for the billing month computed in accordance with the provisions of Rate Schedule COG.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule TAXES.

Pipeline Safety Inspection Fee: The billing shall reflect adjustments in accordance with provisions of the Pipeline Safety Inspection Fee, Rate Schedule PSFUG.

Weather Normalization Adjustment: The billing shall reflect adjustments in accordance with the provisions of the Weather Normalization Adjustment Clause, Rate Schedule WNA.

Rate Case Expense Rider: Adjustments in accordance with provisions of the Rate Case Expense Surcharge Rider, Rate Schedule RCE.

Miscellaneous Service Charges: The billing shall reflect adjustments in accordance with provisions of the Miscellaneous Service Charges, Rate Schedule M.

**UNIVERSAL NATURAL GAS, LLC D/B/A UNIVERSAL NATURAL GAS, INC.**

**COMMERCIAL SERVICE**

**RATE SCHEDULE COMM**

**AVAILABILITY**

This schedule is available to commercial and other non-residential (hereinafter called "Commercial") customers receiving natural gas service from UNIGAS (hereinafter called "Company").

**APPLICATION OF SCHEDULE**

The Company will provide distribution service for the delivery of gas supply through the Company's facilities to eligible Commercial customers in which each unit requires a separate connection and meter. Gas supplied hereunder is for the individual use of the Customer at one point of delivery and shall not be resold or shared with others. If the Customer has a written contract with Company, the terms and provisions of such contract shall be controlling.

**BASE MONTHLY RATE**

For bills rendered on and after the effective date of this rate schedule, the monthly billing period rate for each customer receiving service under this rate schedule shall be the sum of the following:

<b><u>UNIGAS – COMMERCIAL TARIFF MATRIX</u></b>				
<b><u>COMMERCIAL CUSTOMER DESCRIPTION</u></b>	<b><u>MONTHLY CONSUMPTION CRITERIA</u></b>		<b><u>BASE COMMERCIAL TARIFF RATES</u></b>	
	<b><u>Equal to or Greater Than:</u></b>	<b><u>Less Than or Equal to:</u></b>	<b><u>Monthly Meter Charge</u></b>	<b><u>Commodity</u></b>
	Small Commercial	0.0 Mcf/Mth.	150.0 Mcf/Mth.	\$45.00/Mth. (Base) + \$27.11/Mth. (Interim Rate Adj.)* =  \$72.11/Mth. (Total)
Large Commercial	150.1 Mcf/Mth.	N/A	\$175.00/Mth. (Base) + \$495.07/Mth. (Interim Rate Adj.)* =  \$670.07/Mth. (Total)	\$2.91/Mcf

## **OTHER ADJUSTMENTS**

Cost of Gas Component: The basic rates for cost of service set forth above shall be increased by the amount of the Cost of Gas Component for the billing month computed in accordance with the provisions of Rate Schedule COG.

Pipeline Safety Inspection Fee: The billing shall reflect adjustments in accordance with provisions of the Pipeline Safety Inspection Fee, Rate Schedule PSFUG.

Taxes: Plus applicable taxes and fees related to above in accordance with the provisions of Rate Schedule TAXES.

Rate Case Expense Rider: Adjustments in accordance with provisions of the Rate Case Expense Surcharge Rider, Rate Schedule RCE.

Miscellaneous Service Charges: The billing shall reflect adjustments in accordance with provisions of the Miscellaneous Service Charges, Rate Schedule M.