

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO UNIVERSAL NATURAL GAS, LLC (d/b/a UNIVERSAL NATURAL GAS, INC.) AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TEN (10) YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC WAYS TO INSTALL, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE PUBLIC WAYS OF THE CITY OF KYLE, TEXAS FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CUSTOMERS AND THE PUBLIC 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 WAYS; 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 KYLE; 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 CITY COUNCIL OF THE CITY OF KYLE, 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 City of Kyle, in Hays County, Texas, a municipal corporation, hereinafter also referred to as "City".
- 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 City Council 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 Ways.
- 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.

- 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 Ways.
- H. “Franchise Fee” or “Franchise Fees” shall mean the sum of fees to be paid to the City by Grantee under Section 11 of this Ordinance.
- I. “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.
- J. “Gas Transportation” means the transportation of Transport Gas for redelivery to Customers with re-delivery points located within the corporate limits of the City.
- K. “Grantee” shall mean UNIVERSAL NATRUAL GAS, LLC, a Texas limited liability company, and its successors and assigns.
- L. “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 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] revenues derived from monthly service fees and miscellaneous service charges, such as charges to connect, disconnect, or reconnect customers within the corporate limits of the City, charges to handle returned checks from consumers within the corporate limits of the City, and such other service charges as may, from time to time, be authorized in the rates of the Grantee;
 - [3] sales of gas billed but not collected or received by the Grantee;
 - [4] 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;
 - [5] sales taxes, gross receipts taxes, other applicable taxes under state or local law, and Franchise Fees collected by Grantee;
 - [6] any interest income earned by the Grantee; and
 - [7] 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 Ways.
- M. “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 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, gross receipts taxes, other applicable taxes under state or local law, and Franchise Fees collected by Grantee;
- [5] any interest 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 Ways.

N. "Permit" means the authorization 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 new mains and pipes,
- [2] for the new construction or laying of the new mains and pipes by Grantee as shown on plans, and
- [3] to perform all work on existing Grantee facilities or the System within the Public Ways or other City rights-of-way, and
- [4] approved by the City.

O. "Person" means an individual, corporation, general or limited partnership, limited liability company, trust, association, or other business or legal entity.

P. "Public Ways" means the present and future streets, avenues, boulevards, parkways, lanes, alleys, bridges, sidewalks, easements, highways, and public places within the municipal corporate limits of the City.

Q. "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.

- R. “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 Franchise Ordinance, the Grantor hereby grants to Grantee, its successors and assigns and Affiliates, for the term of ten (10) years from the effective date of this Ordinance, the right to enter upon the Public Ways to install, operate and maintain a System along, across, over and under the Public Ways for the privilege of transporting, distributing and/or selling gas to Customers and the public 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 Franchise Ordinance.
- B. The Ordinance shall have the effect of and shall be a contract between City and Grantee and shall be the measure of the rights and liabilities of City as well as Grantee, subject to City Ordinances and applicable state and federal laws.
- 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.

SECTION 3. FRANCHISE ASSIGNMENT, SALE OR LEASE

Grantee may not sell, transfer or assign the franchise granted hereby without authorization of City Council expressed by ordinance.

SECTION 4. USE AND REPAIR OF THE PUBLIC WAYS

- A. Grantee’s System shall be erected, placed, extended, repaired, laid or otherwise installed, operated and maintained in such a manner as will, at the sole but reasonable discretion of the City, not interfere with or damage other existing public uses of the Public Ways, 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. This Ordinance shall constitute the Permit to

perform all work on existing Grantee facilities or the System within the Public Ways or rights of way.

- B. Except in the case of an emergency, within the City's full purpose jurisdiction, when Grantee desires to lay any new mains or replace any existing mains hereunder, and before commencing its new construction work or replacement of mains, it shall submit to the City Engineer, or other designee identified by the City, a map or plan showing the streets, avenues, alleys, and other public places and the locations thereon wherein it proposes to construct such new or replacement mains and pipes. The City Engineer, or other designee, shall by written notice, either issue or deny the Permit to Grantee. Approval by the City Engineer, or other designee, shall constitute the Permit to Grantee for the opening of the streets, avenues, alleys and other public places shown on the map or plan, and for the new construction or laying of the new mains and pipes by Grantee or the replacement of existing mains and pipes as shown on the plan.

In the event that the Permit is denied, the City Engineer, or other designee, 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 ten (10) calendar days, the appeal will be deemed to be denied unless agreed otherwise in writing by Grantee and the City.

This Subsection 4 (B) shall also apply to all other facilities and equipment of Grantee to be constructed or installed on public property within the City's full purpose jurisdiction.

- C. It shall be necessary for Grantee to secure a Permit, as defined herein, for the laying of service pipes from the mainline pipes of Grantee to its Customers.
- D. Grantee is required to secure all permits and pipelines permits as promulgated by the City's Ordinances.
- E. After any excavation or disturbance, Grantee shall, at its own expense, with due diligence and dispatch, place the Public Way, and all public or private property so disturbed, in a condition City equal to or better than that before being damaged, destroyed, or disturbed by the Grantee.

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 ordinances.

The City reserves the right to:

- A. Determine, fix, and regulate the charges, rates, or compensation to be charged by the Grantee

- B. Repeal the Franchise by ordinance any time upon the failure or refusal of the Grantee to comply with the terms of this Franchise Agreement, the City Charter, or any applicable city ordinance
- C. Establish standards and quality of products or service.
- D. Require such expansion, extension, and improvement of plants and facilities as are necessary to provide adequate service to all the City and to require that maintenance of facilities be performed at the highest reasonable standard of efficiency.
- E. Prescribe the method of accounting and reporting to the City so that the Grantee will accurately reflect the expenses, profits, and property values used in rendering its services to the City. It shall be deemed sufficient compliance with this requirement if the Grantee keeps its accounts in accordance with the uniform system established by an applicable federal or state agency for such service.
- F. Examine and audit at any time the accounts and other records of Grantee and to require annual and other reports prescribed in the City ordinances.
- G. Require such compensation, regulatory, rental, and franchise fees as may not be prohibited by law.
- H. Impose such regulations and restrictions as may be deemed desirable or conducive to the health, safety, welfare and accommodation of the public.
- I. Assess a penalty against the Grantee for failure to comply with this Agreement, the ordinances of the City, or the law of the State. Grantee will be informed of the Grantee's violations in writing, stating the provisions the Grantee failed to comply with, a time for a hearing, and a deadline for the correction of the non-compliance. The City may assess a reasonable penalty based on the facts issues and circumstances determined at the hearing. Failure to correct the non-compliance within a reasonable time may result in the City terminating the Agreement.

SECTION 6. DEPTH OF PIPELINES

After the effective date of this franchise, Grantee's main or lateral lines installed or replaced in Public Ways shall be installed or replaced at depths which comply with all applicable City Ordinances applicable at the time of installation as well as state and federal rules, regulations and company policies establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. Depth shall be determined as outlined in City's Ordinances.

SECTION 7. DUTY TO MOVE OR ALTER LINES

- A. City 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 City, along, across, over or under the Public Ways. In permitting such work to be done, the City shall be liable to the Grantee for any damage to Grantee's

pipelines and facilities caused by City or its agents' or contractors' negligence, to the extent allowed by law.

- B. When Grantee is required by City to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets and alleys by the City, Grantee shall remove or relocate such mains, laterals, and other facilities at Grantee's sole cost and expense. If 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 City, then Grantee's costs and expenses shall be included in any application by City for reimbursement, if Grantee provides the City its appropriate cost and expense documentation prior to the filing of the application. City shall provide reasonable notice to Grantee of the deadline for Grantee to submit documentation of the costs and expenses of such relocation to City.
- C. When Grantee is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by the City 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.
- D. Grantee is required, at its own expense, to restore all public and private property to a condition equal to or better than that before being damaged or destroyed by the Grantee as a result of the performance of this Agreement.

SECTION 8. EXTENSIONS

Grantee is required to extend and provide service to all parts and portions of the City that are subject to new greenfield development. It is an defense to violation of this provision if Grantee has offered its services to applicable developers, at prevailing and competitive rates, and developer has declined.

SECTION 9. 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, 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 10. GRANTEE'S RATES, RULES AND REGULATIONS

The Grantee has the right to make and enforce 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 and deemed desirable or constructive to the health, safety, welfare and accommodation of the public in accordance with the City's ordinances and subject to all applicable federal and state laws and regulatory agencies with appropriate jurisdiction.

SECTION 11. INSPECTION OF RECORDS

Grantee permits City or its agents to inspect, examine and audit, , the books, papers and any other records kept by Grantee pertaining to the rendering of service to the public, such as plats, maps and atlases identifying Grantee's pipelines in the City, and the books and records necessary, as determined by the City, to verify the franchise fee payment provided for in Section 12 hereof. Notwithstanding the obligation herein, Grantee shall have the right to the reasonable protection of proprietary information and to provide redacted documents or require City or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Grantee but which do not frustrate the purposes of this Section.

SECTION 12. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE

A. As full consideration for the rights and privileges conferred by this Ordinance, Grantee agrees to pay City as follows:

- [1] Grantee shall collect the Franchise Fee from its Customers and shall pay City 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 City 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 January 31st (for the last six months of the prior calendar year) and July 31st (for the first six months of the calendar year). 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 one year after payment thereof has been made.

- [3] Any payments that are received after 5:00 P.M. of the due date constitute late payments. Late payments shall accrue interest from such due date until payment is received by the City. 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. 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, permit 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 Ways 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.

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 13. CONDITIONS OF FRANCHISE

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 City now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.

To the extent that all or any other existing ordinance shall conflict with any provision of this Ordinance, this Ordinance shall prevail upon passage, adopting and acceptance of this Ordinance.

In addition to all other rights, powers and remedies retained by the Grantee and City under this Franchise Agreement or otherwise, in the event a dispute arises regarding the obligations under this Franchise Agreement, the City shall give written notice specifying the nature of the dispute to the Grantee. The Grantee shall have 45 days from receipt of such notice to remedy the dispute. If the cure cannot reasonably be completed within such 45-day period, commercially reasonable best

efforts to complete such cure shall be used. In the event a remedy does not occur, the City 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. 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 City's right to seek judicial determination of a breach of this Franchise Agreement, nor the City's reserved right expressed in Section 5(I) herein.

SECTION 14. INVALIDITY OF ORDINANCE

If any clause, sentence, or section 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 City by others for Transport Gas as set forth in Paragraph (2) of Subsection A of Section 13 of this Ordinance, Grantee shall thereafter have no obligation to make such payment to City 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 15. EFFECTIVE DATE AND TERM

This ordinance shall take effect and be in full force immediately upon the date of its final passage.

SECTION 16. NOTICE OF ORDINANCE

The Franchise Ordinance may not be passed except on two readings held after a public hearing for which ten (10) days notice is given.

SECTION 17. 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 Ordinance.

SECTION 18. REPEALER

Each and every other ordinance or part thereof which is directly in conflict with any provision herein as to the grant of a franchise for natural gas services and the regulation thereof is hereby repealed.

SECTION 19. SEVERABILITY

That it is hereby declared that the sections, articles, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if any phrase, clause, sentence, paragraph, subsection, article, or section of this ordinance shall be declared void, ineffective, or unconstitutional by a valid judgment or final decree of a court of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, articles, or sections of this ordinance since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article, or section.

SECTION 20. 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 21. 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 22. VENUE

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

SECTION 23. ANNEXATIONS

City shall promptly notify Grantee in writing of areas newly annexed into or de-annexed from the corporate limits of City, and Grantee shall update its records for the purpose of payment of franchise fees as soon as reasonably practicable after receiving such notice. Upon receipt of notice of annexation from the City, Grantee shall have one hundred eighty (180) days to begin collecting and paying the Franchise Fee for any revenues received from Grantee's customers residing in the newly annexed territories.

SECTION 24. RENEWAL OF FRANCHISE; NOTICE

Upon expiration of the initial ten (10) 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 up to three (3) successive terms, with each renewal term lasting for five (5) years. Either party may provide written notice of termination to the other party prior to the expiration of a renewal term and up to six months after the beginning of an automatically renewed term.

Notices to Parties shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to:

City of Kyle:

City Manager
City of Kyle
100 W. Center Street
Kyle, Texas 78640

Copy:

Paige Saenz
Knight Law Firm, LLC
Executive Office Terrace
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

Universal Natural Gas, LLC:

Universal Natural Gas, LLC (d/b/a Universal Natural Gas, Inc.)
Attn: General Counsel
61 Carlton Woods Dr., Building 2
The Woodlands, TX 77382

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 25. PROOF OF LIABILITY 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 26. 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. Grantor shall maintain reasonably adequate insurance covering its obligations of indemnity under Section 9 hereof. A certificate of insurance and a complete copy of the insurance policy including all riders, exhibits, amendments, and attachments shall be provided to the City annually and upon any substantial change in the nature of its coverage under this section. Should Grantee elect to self-insure, its annual notice to the City shall contain information describing with reasonable particularity all procedures for filing a claim.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
KYLE, TEXAS, THIS _____ DAY OF _____, 2022.**

MAYOR

ATTEST:

City Secretary

The above and forgoing Franchise Ordinance and the grants, franchise, powers, rights and privileges thereto were accepted by Grantee this ____ day of _____, 2022.

UNIVERSAL NATURAL GAS, LLC

By: _____

Name: _____

Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, _____ of UNIVERSAL NATURAL GAS, LLC, and who represents he has been given authority to sign this Agreement by and on behalf of said entity.

Notary Public, State of _____