

ORDINANCE NO. 2022-011

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, TEXAS, GRANTING A NON-EXCLUSIVE FRANCHISE AGREEMENT TO UNIVERSAL NATURAL GAS, LLC (d/b/a UNIVERSAL NATURAL GAS, INC.), AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TWENTY (20) YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE, TO ENTER THE RIGHT-OF-WAYS OF THE CITY OF SANTA CLARA, TEXAS TO INSTALL, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE RIGHT-OF-WAYS OF THE CITY OF SANTA CLARA, TEXAS FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CUSTOMERS AND THE PUBLIC GENERALLY WITHIN THE CITY; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR ASSIGNMENT, SALE OR LEASE OF THE FRANCHISE; PROVIDING FOR USE AND REPAIR OF THE RIGHT-OF-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 SANTA CLARA; PROVIDING FOR INSPECTION OF RECORDS; REQUIRING PAYMENT OF 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 THE FRANCHISE AND AN OPERATIVE DATE THEREOF; REPEALING ALL OTHER ORDINANCES DIRECTLY IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY AND; PROVIDING FOR PUBLICATION AND PRESCRIBING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, 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 Franchisee.
- B. "City" means the City of Santa Clara, located in Guadalupe County, Texas, a municipal corporation, hereinafter also referred to as "Franchisor", including any land held by the City's Section 4A Economic Development Corporation or Section 4B Community Development Corporation.
- 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 City Right-of-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. In the absence of a City Manager or City Administrator, the reference to such position shall mean the City Mayor.

- 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 Franchisee through any use of the Right-of-Ways.
- H. "Franchise Fee" or "Franchise Fees" shall mean the sum of fees to be paid to the City by Franchisee under Section 11 of this Ordinance.
- I. "Gas Sales" means the sale of natural gas to Franchisee'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. "Franchisee" shall mean UNIVERSAL NATURAL GAS, LLC, a Texas limited liability company, and its successors and assigns.
- L. "Gross Receipts from Gas Sales" shall constitute and include Franchisee's total receipts from Gas Sales to Franchisee's Customers within the corporate limits of the City. Franchisee'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 Franchisee;
  - [3] sales of gas billed but not collected or received by the Franchisee;
  - [4] the revenue of any Person including, without limitation, an Affiliate of Franchisee, to the extent that such revenue is also included in Gross Receipts from Gas Sales of the Franchisee;
  - [5] sales taxes, gross receipts taxes, other applicable taxes under state or local law, and Franchise Fees collected by Franchisee;
  - [6] any interest income earned by the Franchisee; 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 Right-of-Ways.

M. "Gross Receipts from Gas Transportation" shall constitute and include Franchisee's total receipts from its transportation of Transport Gas, consisting of receipts from cost of service. Franchisee'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 Franchisee;
- [3] the revenue of any Person including, without limitation, an Affiliate of Franchisee, to the extent that such revenue is also included in Gross Sales Revenues of the Franchisee;
- [4] sales taxes, gross receipts taxes, other applicable taxes under state or local law, and Franchise Fees collected by Franchisee;
- [5] any interest income earned by the Franchisee; 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 Right-of-Ways.

N. "Permit" means the authorization to Franchisee:

- [1] for the opening of the streets, avenues, alleys, other public places or Right-of-Ways shown on maps or plans submitted by Franchisee to the City Engineer, showing the streets, avenues, alleys and the locations thereon wherein Franchisee proposes to construct new mains and pipes,
- [2] for the new construction or laying of the new mains and pipes by Franchisee as shown on plans, and
- [3] to perform all work on existing Franchisee facilities or the System within the City Right-of-Ways.

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

P. "Right-of-Ways" means the present and future streets, avenues, boulevards, parkways, lanes, alleys, bridges, sidewalks, easements, highways within the municipal corporate limits of the City, whether dedicated or not.

Q. "System" means Franchisee'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 Franchisee) and delivered by such user or its designee to Franchisee at a point on Franchisee's System, such point of delivery to be defined by Franchisee, and carried, delivered or transported through Franchisee's System at a point of redelivery within the municipal corporate limits of the City by Franchisee to the user for a fee.

## SECTION 2. GRANT OF FRANCHISE

- A. Subject to the terms and conditions of this Franchise Ordinance, the Franchisor hereby grants to Franchisee, its successors and assigns and Affiliates, for the term of twenty (20) years from the effective date of this Ordinance, the right to enter upon the Right-of-Ways to install, operate and maintain a System along, across, over and under the Right-of-Ways 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 Franchisee'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 Franchisor and Franchisee, and shall be the measure of the rights and liabilities of Franchisor as well as Franchisee.
- 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 Franchisee under the Texas Gas Utility Regulatory Act, as amended. This is a non-exclusive franchise.

## SECTION 3. FRANCHISE ASSIGNMENT, SALE OR LEASE

Franchisee is expressly given the power and privilege to sell, transfer or assign the franchise granted hereby, or any part of this franchise, to any person, entity or corporation, but Franchisee and such buyer, transferee or assignee shall first notify Franchisor 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:

City of Santa Clara  
Attn: Mayor  
1653 N. Santa Clara Road  
Santa Clara, TX 78124

## SECTION 4. USE AND REPAIR OF THE RIGHT-OF-WAYS

- A. Franchisee'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 Right-of-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 Franchisee facilities or the System within the Right-of-Ways.

- B. Except in the case of an emergency, within the City's full purpose jurisdiction, when Franchisee 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 proper authority, a detailed map or plan showing the size of pipes, the streets, avenues, alleys, and other public places and the locations thereon, and depths therein wherein it proposes to construct such new or replacement mains and pipes. The City Engineer, or other proper authority, shall by written notice to Franchisee, either approve and issue a Permit to Franchisee or deny the map or plan. Approval by the City Engineer, or other proper authority, shall constitute the Permit to Franchisee 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 Franchisee or the replacement of existing mains and pipes as shown on the plan.

In the event that the map or plan is denied, the City Engineer, or other proper authority, shall inform Franchisee of the reasons for the denial and all necessary steps to secure approval of the map or plan. Franchisee shall have the right to immediately appeal the denial of the map or plan to the City Manager, and if not approved within ten (10) calendar days by the City Manager, Franchisee 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 Franchisee and the City. Appeal of any decision made by the City Council shall be made to the District Court of Guadalupe County, Texas, and an appeal from any decision of the District Court shall be as in all other civil actions.

This Subsection 4 (B) shall also apply to all other facilities and equipment of Franchisee to be constructed or installed in public Right-of-Way within the City's full purpose jurisdiction.

- C. It shall not be necessary for Franchisee to secure a Permit for the laying of service pipes from the mainline pipes of Franchisee to its Customers so long as the service pipe is only being extended across private property and the length of the service pipe from the mainline connection to the Customer meter is no longer than one hundred (100) feet.
- D. After any excavation or disturbance, Franchisee shall, with due diligence and dispatch, place the Right-of-Way in a condition in compliance with the Franchisor's reasonable standards and specifications.

## SECTION 5. REGULATION OF SERVICE

The System of Franchisee 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 Franchisee 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 Franchisee of any other obligations set forth herein.

## SECTION 6. DEPTH OF PIPELINES

After the effective date of this franchise, Franchisee's main or lateral lines installed or replaced in Right-of-Ways shall be installed or replaced at depths which comply with all applicable state and federal rules and regulations establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. 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. Franchisor 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 Franchisor, along, across, over or under the Right-of-Ways. In permitting such work to be done, the Franchisor shall be liable to the Franchisee for any damage to Franchisee's pipelines and facilities caused by Franchisor or its agents' or contractors' negligence. In addition to any other defense in law or equity, the City's reliance on Franchisor's approved plans shall specifically constitute a defense and bar any claim from damages. Under no circumstances shall the City be held liable for third-party actions not under the direction of the City.
- B. When Franchisee is required by Franchisor to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets and alleys by the Franchisor, and Franchisee is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Franchisee as a result of such removal or relocation, and such reimbursement is required to be handled through Franchisor, then Franchisee's costs and expenses shall be included in any application by Franchisor for reimbursement, if Franchisee provides the Franchisor its appropriate cost and expense documentation prior to the filing of the application. Franchisor shall provide reasonable notice to Franchisee of the deadline for Franchisee to submit documentation of the costs and expenses of such relocation to Franchisor.
- C. When Franchisee is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by the Franchisor without reimbursement, Franchisee 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. If Franchisor shall require the Franchisee 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 Franchisor, to use the Right-of-Ways, the Franchisee 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

Franchisee 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 Franchisee, its servants, agents, employees, contractors, subcontractors, licensees, or any other person or entity in connection with the Franchisee 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, Franchisee 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 Franchisee 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. FRANCHISEE'S RATES, RULES AND REGULATIONS

The Franchisee 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 Franchisor insofar as they are consistent with the jurisdiction of the Railroad Commission of Texas or such other regulatory authority. Franchisee shall supply natural gas and provide regulated services at the rates and under the terms and conditions specified by such rules, any tariffs filed with the appropriate regulatory authority, and as provided herein.

#### SECTION 10. INSPECTION OF RECORDS

Franchisee shall permit Franchisor or its agents to inspect, examine and audit, during regular business hours, the books, papers and records kept by Franchisee 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 Franchisee'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, Franchisee shall have the right to the reasonable protection of proprietary information and to provide redacted documents or require Franchisor or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Franchisee 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, Franchisee agrees to pay Franchisor as follows:

- [1] Franchisee shall collect the Franchise Fee from its Customers and shall pay Franchisor a Franchise Fee the sum of which is equal to Five Percent (5%) of the Gross Receipts received by Franchisee, 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; Gross Receipts from Gas Transportation to Transport Gas Customers with re-delivery points located in the City; plus seven cents (7c) per Mcf for natural gas transported by Company for its Transport Customers. . All sums due from Franchisee shall be in lieu of all other franchise fees, licenses, or occupational taxes, which may be levied or attempted to be levied on Franchisee by the City.

- [2] Franchisee shall pay such Franchise Fee collected from its Customers to the Franchisor 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, Franchisee shall collect from its Customers and pay the City on January 31<sup>st</sup> (for the last six months of the prior calendar year) and July 31<sup>st</sup> (for the first six months of the calendar year). Franchisee 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 Franchisor. 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 Right-of-Ways 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 Franchisee'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 Right-of-Ways, with the sole exception of sales taxes, ad valorem taxes and special assessments which are made without reference to or dependence upon Franchisee'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, Franchisee 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

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 Franchisor 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 Franchisee and Franchisor under this Franchise Agreement or otherwise, in the event a dispute arises regarding the obligations under this Franchise Agreement, the Franchisor shall give written notice specifying the nature of the dispute to the



Franchisee. The Franchisee 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 Franchisor shall give 20 days written notice of intent to pursue additional judicial and/or legal remedies to the Franchisee, 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 Franchisee 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 Franchisee's or Grantor's right to seek judicial determination of a breach of this Franchise Agreement.

#### SECTION 13. 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 Franchisee shall not be permitted to collect in whole or in part the compensation due Franchisor by others for Transport Gas as set forth in Paragraph (2) of Subsection A of Section 11 of this Ordinance, Franchisee shall thereafter have no obligation to make such payment to Franchisor 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. EFFECTIVE DATE AND TERM

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

#### SECTION 15. NOTICE OF ORDINANCE

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

#### SECTION 16. ACCEPTANCE BY FRANCHISEE

Franchisee has consented to and agrees with the Franchise Agreement herein contemplated by this Ordinance as evidenced by the notarized signature of an authorized representative of Franchisee on Attachment "A".

#### SECTION 17. 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 18. SEVERABILITY

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 19. 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 Franchisee 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 Franchisee 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 20. 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 Franchisee to alter, lower, elevate, relocate, or remove its pipelines in any such street, as and when required by the City. Such alterations to the Franchisee's systems shall be made at Franchisee's expense, subject to the Franchisee's right to recover such costs from the ratepayers within the City pursuant to Section 104.112 of the Texas Utilities Code.

#### SECTION 21. VENUE

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

#### SECTION 22. ANNEXATIONS

Franchisor shall promptly notify Franchisee in writing of areas newly annexed into or de-annexed from the corporate limits of the City, and Franchisee 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, Franchisee shall have one hundred eighty (180) days to begin collecting and paying the Franchise Fee for any revenues received from Franchisee's customers residing in the newly annexed territories.

#### SECTION 23. RENEWAL OF FRANCHISE; NOTICE

Upon expiration of the initial twenty (20) 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.

Notices to the City shall be provided as set forth in Section 3. Notices to Franchisee shall be sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to:

UNIVERSAL NATURAL GAS, LLC  
Attn: Richard Bard  
9905 Woodloch Forest Dr., Floor 2A  
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 24. PROOF OF LIABILITY TO PERFORM UNDER THIS FRANCHISE

At the City's request, the Franchisee 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 25. INSURANCE

During the term hereof, the Franchisee 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 Franchisee will provide a certificate of insurance evidencing such coverage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA, TEXAS, THIS 28 DAY OF NOVEMBER, 2022.



ATTEST:

  
\_\_\_\_\_  
JEFF HUNT, MAYOR

  
\_\_\_\_\_  
DONNA WHITE, CITY SECRETARY

ATTACHMENT A

The Franchise Agreement as contemplated and incorporated in the above and forgoing Franchise Ordinance and the grants, franchise, powers, rights, privileges, and duties thereto are accepted by Franchisee this 14<sup>th</sup> day of November, 2022.

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 14<sup>th</sup> day of November, 2022, by Brad Zarin, General Counsel of UNIVERSAL NATURAL GAS, LLC, and who represents s/he has been given authority to sign this Agreement by and on behalf of said entity.

[Signature]

Notary Public, State of Texas

