

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 FIFTEEN (15) 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 NATURAL GAS DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER, AND UNDER THE PUBLIC WAYS OF THE CITY OF NEW BRAUNFELS, TEXAS FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF NATURAL 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 NEW BRAUNFELS; 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 PREVIOUS GAS FRANCHISE ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND PRESCRIBING AN EFFECTIVE DATE.

**WHEREAS**, Universal Natural Gas, Inc. is a gas utility under Chapter 121, Texas Utilities Code, and a utility company under Chapter 182, Texas Tax Code;

**WHEREAS**, Universal Natural Gas, Inc. desires to serve customers within the corporate limits of the City of New Braunfels, Texas; and

**WHEREAS**, Universal Natural Gas, Inc. and the City desire to set forth the conditions of the use of the City's Public Ways by Universal Natural Gas, Inc. within the corporate limits of the City, and other rights and obligations of the City and Universal Natural Gas, Inc.;

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:**

**SECTION 1. DEFINITIONS**

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

- A. "Affiliate" shall mean any person or entity defined as an affiliate in Utilities Code § 101.003(2).

- B. "City" shall mean the City of New Braunfels, in Comal County, Texas, a municipal corporation, hereinafter also referred to as "Grantor".
- C. "City Secretary" shall mean 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" shall mean the City Council of the City as the governing body of the City.
- E. "City Engineer" shall mean 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" shall mean 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" shall mean 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 to whom Grantee provides service through any use of the Public Ways irrespective of whether the rates Grantee charges such Customers are established by the regulatory authority or the result of negotiations between Grantee and the Customer.
- H. "Effective Date" shall mean date of final passage of this Franchise Ordinance.
- I. "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.
- J. "Franchise Agreement" shall mean this Ordinance.
- K. "Gas Sales" shall mean the sale of natural gas to Grantee's Customers located within the corporate limits of the City by use of the System inclusive of gas sold to residential, commercial, industrial, or transportation customer classes.
- L. "Gas Transportation" shall mean the transportation of Transport Gas for redelivery to Customers by use of Grantee's System located in the City's Public Ways within the City's corporate limits.
- M. "Grantee" shall mean UNIVERSAL NATURAL GAS, LLC, a Texas limited liability company, and its successors and assigns.
- N. "Gross Receipts from Gas Sales" shall mean Grantee's total receipts from Gas Sales to Grantee's Customers within the corporate limits of the City, including 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.

O. Grantee's Gross Receipts from Gas Sales subject to the Franchise Fee shall specifically exclude:

- [1] receipts from Gas Sales 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, 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, to Gas Sales, or to receipts from Transport Gas services Grantee provides.

P. "Gross Receipts from Gas Transportation" shall mean Grantee's total receipts from its transportation of Transport Gas through Grantee's System within the City (excluding gas sold to another gas utility in the City for resale to its customers within the City).

Q. Grantee's Gross Receipts from Gas Transportation subject to the Franchise Fee shall specifically exclude:

- [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, to Gas Sales, or to receipts from Transport Gas services Grantee provides.

- R. "Mainline Pipes" shall mean a transmission line ranging in diameter from 4" to 10" that serves as a common source of supply for more than one Service Pipe.
- S. "Permit" shall mean the authorization to Grantee:
- [1] for the opening of the Public Ways shown on maps or plans submitted by Grantee to the City Engineer, showing the locations thereon wherein Grantee proposes to install, maintain, repair, remove, or 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.
- T. "Person" shall mean an individual, corporation, general or limited partnership, limited liability company, trust, association, or other business or legal entity.
- U. "Public Ways" shall mean the present and future streets, avenues, boulevards, parkways, lanes, alleys, bridges, sidewalks, and highways within the municipal corporate limits of the City excluding parks and recreation areas and buildings or other real property not used as any form of roadway owned or controlled by City.
- V. "Service Pipes" shall mean a distribution line that transports gas from a common source of supply to (a) a customer meter or the connection to a customer's piping, whichever is farther downstream, or (b) the connection to a customer's piping if there is no customer meter..
- W. "System" shall mean 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, and highways within the municipal corporate limits of the City.
- X. "Transport Gas" shall mean 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, for the term of fifteen (15) 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 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 Franchise Ordinance. This Franchise does not authorize Grantee to use any property owned, controlled, or leased by the City that is not a Public Way.
- 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.

## SECTION 3. FRANCHISE ASSIGNMENT, SALE OR LEASE

Grantee 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 but only with the prior written approval of the City Council expressed by ordinance; *provided*, however, that Grantee may sell, transfer or assign the franchise granted hereby, or any part of this franchise, to an affiliate of Grantee without further action or approval by Grantor. An assignment to an affiliate of Grantee under this paragraph is not effective unless Grantee notifies the City of such assignment and provides the following information: (i) name, address, phone number, and email address for the primary contact person of such affiliate assignee; and (ii) information sufficient to establish that such affiliate assignee qualifies as an assignee under this paragraph. Further, 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.

## 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, consistent with reasonable necessity, cause the least interference with other existing public uses of the Public Ways, including but not limited to existing sewer, water, pipes, electricity, telephone or communication facilities, public or private drains, and any other facilities within the City and also including those utilities granted by franchise or permit by the City.

- B. Except in the case of an emergency, within the City's jurisdiction, when Grantee desires to lay any new mains or replace any existing mains hereunder, and before commencing its repairs, maintenance, new construction work, or replacement of components of its System, it shall submit to the City Engineer, or other proper authority, 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 proper authority, shall by written notice, either issue or deny the Permit to Grantee. Approval by the City Engineer, or other proper authority, shall constitute the Permit to Grantee for the opening the specific locations of the Public Ways shown on the map or plan, for repairs, maintenance, new construction work, or replacement of components of its System as shown on the plan.

In the event that the Permit is denied, the City Engineer, or other proper authority, shall advise Grantee of the reasons for the denial 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) business 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) business days, 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 Comal 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 Grantee to be constructed or installed on public property within the City's full purpose jurisdiction.

- C. It shall not be necessary for Grantee to secure a Permit for the laying of Service Pipes from the Mainline Pipes of Grantee to its Customers.
- D. After any excavation or disturbance, Grantee shall, with due diligence and dispatch, place the Public Way in a condition in compliance with the Grantor's reasonable standards and specifications, and shall as reasonably practicable, and in coordination with the City, restore to its original functional condition all Public Ways that Grantee may disturb.

## 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 in this Ordinance.

## 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 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. Grantee shall use reasonable efforts to bury the underground portions of its pipelines to a minimum depth of four (4) feet below the surface.

#### 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 Ways.
- B. 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.
- C. When Grantee is required to remove or relocate its mains, laterals or other facilities to accommodate construction, widening, straightening, relocation, or improvement of a highway, street, alley, Public Way, or other public work by the Grantor without reimbursement or to otherwise accommodate Grantor under this Ordinance, Grantee shall have the right to seek a surcharge to recover reasonable and necessary relocation costs pursuant to Section 104.112 of the Texas Utilities Code or any other applicable law or regulations.
- D. 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 Ways, the Grantee shall have the right to seek reimbursement from the person, firm corporation or entity desiring or occasioning such change for any and all loss, cost or expense occasioned thereby. City shall have no duty to assist, enforce, or participate in Grantee's pursuit of such reimbursement.
- E. If the City requires Grantee to remove, alter, change, adapt, or conform the System for street widening, street straightening, relocation, or changes in the grade or contours of a street, alley or other Public Way, or construction of a water pipe, gas pipe, sewer, or other City-owned structure, then Grantee shall make the alterations or changes as soon as practicable when requested in writing by the City, without claim for reimbursement or damages against the City.

## 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, including without limitation any Claims arising from tort, personal injury, death, property damage or nuisance, provided however, that in the event of such Claims 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

- A. Subject to the City's exclusive original jurisdiction as a regulatory authority over gas utilities under the Texas Utilities Code, 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 charter, ordinances, and regulations of the Grantor.
- B. Grantee 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. Grantor hereby acknowledges Grantee's initial rates, terms and conditions of service applicable to Customers within the City, which shall be equivalent to the rates, terms and conditions of service Grantee provides to "environs" customers within Comal and Guadalupe Counties but outside the corporate limits of the City, as set forth in Grantee's tariff for natural gas distribution service as currently filed with the Railroad Commission of Texas, available on the Railroad Commission of Texas's website, and attached to this Ordinance as Exhibit A. Grantee shall maintain on file with City copies of its current tariffs, schedules, rates and charges, customer service provisions, and line extension policies (collectively its "Rates") for the duration of this Ordinance.
- C. To the extent City retains or reinstates original rate making jurisdiction, Grantee shall file any general rate case with the City ninety (90) days prior to the date it files a general rate case regarding environs rates with the Railroad Commission of Texas.



## 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 System 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:

- [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, within the municipal corporate limits of the City: (i) from Gas Sales to Customers located in the City; and (ii) from Gas Transportation to 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 for use of the Public Ways.

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 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). 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.

- [2] 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 three (3) years 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 Grantor. Interest shall be calculated in accordance with the interest rate published in the Wall Street Journal for the period to which the late payments pertain.

[4] Except as provided for in the *Non-Exclusive License Agreement Between the City of New Braunfels and Universal Natural Gas, LLC For Use of Public Right-of-Way* executed by the parties and approved by the City on about even date as this Ordinance, it is expressly agreed that the Franchise Fee payments shall be in lieu of any payments for the right to use the Public 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 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, 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, 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; provided further that fees the City charges for any permitting requirements unrelated to Grantee's use of the Public Ways are not exempted by way of payment of the Franchise Fee.

- B. 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, ordinances, and those provisions contained in the Grantor's home-rule charter now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.
- B. 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 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 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. 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.

#### SECTION 13. INVALIDITY OF ORDINANCE; SEVERABILITY

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.

#### SECTION 14. EFFECTIVE DATE AND TERM

This Ordinance shall take effect in accordance with Section 11.02 of the CITY Charter ("Effective Date").

#### SECTION 15. NOTICE OF ORDINANCE

The full text of this Franchise Agreement shall be published in accordance with the requirements of Section 11.02 of the CITY's Charter. Cost of such publication shall be borne by the Grantee.

#### SECTION 16. ACCEPTANCE BY GRANTEE

Grantee consents to and accepts this Franchise Agreement and Grantee's consent and acceptance is evidenced by Grantee's authorized representative's notarized signature found below.

#### SECTION 17. REPEALER

This Ordinance repeals all previously adopted franchise ordinances Grantor granted to Grantee.

#### 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 invalidity, 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, or any other rights under the City's Charter as it now exists or as it may later be amended, nor any rights under the Constitution and laws, present and future, of the State of Texas, nor any of its rights under future ordinances. 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 its Charter or by the Constitution or laws of the State of Texas, or any present or future ordinances; and the Grantee shall perform all duties required of it, by the City Charter, by any valid ordinances 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 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 21. VENUE

The parties' obligations under this Franchise Ordinance are performable in Comal County, Texas and in the event of a dispute between such parties hereto, by agreement of such parties, venue shall be established in Comal County, Texas.

#### SECTION 22. 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. 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 23. RENEWAL OF FRANCHISE

Upon expiration of the initial fifteen (15) year term of this Franchise Agreement, unless one of the parties provides written notice of termination to the other party no later than ninety (90) days from the end of the term of initial term of this Franchise Agreement, this Franchise Agreement shall automatically renew for a period of five (5) years (the "Renewal Term"). Any further renewal of this Franchise Agreement will require compliance with the City Charter provisions under Article XI.

#### SECTION 24. NOTICES

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

City of New Braunfels



Attn: City Manager  
Robert Camareno  
550 Landa Street  
New Braunfels, Texas 78130

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

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 25. 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 26. INSURANCE

During the term hereof, but only upon Grantee first entering 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, 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. A certificate of insurance and a complete copy of the insurance policy including all riders, exhibits, amendments, and attachment shall be provided to the City annually and upon any substantial change in the nature of the coverage under this section. Grantee's insurance shall insure against the risks undertaken pursuant to this Ordinance, including indemnification of the City under Section 8.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
New Braunfels, TEXAS, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

\_\_\_\_\_  
**MAYOR**

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



The above and forgoing Franchise Ordinance and the grants, franchise, powers, rights and privileges thereto were accepted by Grantee this \_\_\_\_ day of \_\_\_\_\_, 2023.

UNIVERSAL NATURAL GAS, LLC

By: \_\_\_\_\_

Name: Richard Bard

Title: Senior Vice President of Engineering

STATE OF TEXAS §

COUNTY OF MONTGOMERY§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, 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 \_\_\_\_\_





**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:	\$34.81
Base Charge:	\$18.00
Interim Rate Adjustments (IRA) <sup>1</sup> :	\$16.81
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.

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<sup>1</sup> 2021 IRA - Case No. 00009430 \$7.43; 2022 IRA – Case No. 00012763 \$9.38

EXHIBIT A

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 MONTHLY RATE</u></b>	
	<b><u>Equal to or Greater Than:</u></b>	<b><u>Less Than or Equal to:</u></b>	<b><u>Monthly Customer Charge</u></b>	<b><u>Commodity</u></b>
Small Commercial	0.0 Mcf/Mth.	150.0 Mcf/Mth.	\$45.00/Mth. (Base) + \$66.97/Mth. (Interim Rate Adj.) <sup>1</sup> =  \$111.97 /Mth. (Total)	\$2.91/Mcf

<sup>1</sup> 2021 IRA - Case No. 00009430 \$27.11; 2022 IRA – Case No. 00012763 \$39.86

EXHIBIT A

Large Commercial	150.1 Mcf/Mth.	N/A	\$175.00 /Mth. (Base) + \$1,061.46/Mth. (Interim Rate Adj.) <sup>2</sup> =  \$1,236.46/Mth. (Total)	\$2.91/Mcf
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**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.

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<sup>2</sup> 2021 IRA - Case No. 00009430 \$495.07; 2022 IRA – Case No. 00012763 \$566.39