

ORDINANCE NO.

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF KELLER, TARRANT COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; REPEALING ALL PREVIOUS ATMOS ENERGY GAS FRANCHISE ORDINANCES; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; A MOST FAVORED NATIONS CLAUSE, AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Keller is the owner of valuable rights of way which have been utilized by Atmos Energy Corporation and its predecessors pursuant to a Franchise issued by the City; and

WHEREAS, the City of Keller is legally authorized to regulate and franchise the use of City owned rights of way; and

WHEREAS, all legal prerequisites for the passage of this Ordinance have been met, including but not limited to the requirements of the Texas Open Meetings Act and the City Charter; and

WHEREAS, City Council has found that the passage of this Ordinance serves the best interests of the health, safety, and welfare of the public.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS:

SECTION 1. All matters stated hereinabove are found to be true and correct and are incorporated herein by reference as if copied in their entirety.

SECTION 2. GRANT OF AUTHORITY/LENGTH OF FRANCHISE/TERM AND CONDITIONS

(A) **Grant of Authority.** The City of Keller, Texas, herein after called “City,” hereby grants to Atmos Energy Corporation,, hereinafter called “Atmos Energy” or

"Company," its successors and assigns, consent to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

(B) **Length of Franchise.** Said privilege and license being granted by this Ordinance is for an initial term ending December 31, 2029. Unless written notice of its intent to renegotiate is provided by either the City or Atmos Energy at least 180 days prior to the expiration of any term, the franchise shall be extended for one (1) additional terms of five (5) years on the same terms and conditions as set forth herein.

(C) **Terms and Conditions.** The provisions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System within the City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future generally applicable ordinances of the City. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 3. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(A) "City" shall mean the City of Keller, Texas.

(B) "Company" shall mean Atmos Energy Corporation, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 7 entitled "Successors and Assigns."

(C) “City Manager” means City's manager, or designee.

(D) “Gross Revenues” shall mean all revenue received from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City.

(1) “Gross Revenues” shall include:

- (a) revenues received from the following ‘miscellaneous charges’:
 - i. charges to connect, disconnect, or reconnect gas within the City;
 - ii. charges to handle returned checks from consumers within the City;
 - and
 - iii. contributions in aid of construction in the form of non-refundable cash payments made toward the cost of projects completed in the Public Right-of-Way (“CIAC”).
- (b) fees collected pursuant to this agreement;
- (c) State gross receipts fees;
- (d) all revenues received by Company from the transportation of gas through the System of Company within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City); and
- (e) the value of gas transported by Company for Transport Customers through the System of Company located in the City’s Public Rights-of-Way (“Third Party Sales”) (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Company’s monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time that the transportation service is performed.

(2) “Gross Revenues” shall not include:

- (a) the revenue of any affiliate or subsidiary of Atmos Energy; and

- (b) sales tax paid to the City; and
- (c) any interest or investment income earned by the Company; and
- (d) 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 Right-of Way.

(E) "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

(F) "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, public easements, public places, public thoroughfares, grounds, and sidewalks of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

(G) "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas for heating, lighting, and power, located in the Public Right-of-Way within the corporate limits of the City.

(H) "Affiliate" shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

(I) "Transport Customer" shall mean any Person for which Company transports gas through the System of Company within the City's Public Rights-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within the City) .

SECTION 4. EFFECT OF OTHER MUNICIPAL FRANCHISE ORDINANCE FEES ACCEPTED AND PAID BY COMPANY

(A) If Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in the Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its Public Rights-of-Way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*.

SECTION 5. ACCEPTANCE OF TERMS OF FRANCHISE

(A) The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary. If the Company does not file such written acceptance of this Franchise Ordinance, the Franchise Ordinance shall be rendered null and void. The effective date shall be determined in accordance with the requirements of Section 28, "Effective Date."

(B) At 11:59 P.M. on December 31, 2029, ALL rights, franchises and privileges herein granted, unless they have already at that time extended pursuant to Section 2, ceased or been forfeited, or extended by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

SECTION 6. NO THIRD PARTY BENEFICIARIES

This Franchise is made for the exclusive benefit of the City and the Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 7. SUCCESSORS AND ASSIGNS

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate without approval of the City Council of the City. Written notice of said transfer or assignment to an Affiliate shall be provided to the City Manager. The City will grant such approval unless proposed Assignee or Transferee is materially weaker than Company. For the purpose of this section, “materially weaker” means that the long term unsecured debt rating of the Assignee is less than investment grade as rated by both S&P and Moody’s. If the Assignee is materially weaker, the City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the Assignee. . Upon approval, the rights, privileges, and Franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

SECTION 8. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Keller City Charter, as amended, and all other generally applicable ordinances of the City of Keller, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

SECTION 9. PREVIOUS ORDINANCES

When this Franchise becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to the Company or its predecessors in interest granted by the City of Keller, Texas, are hereby repealed.

SECTION 10. NOTICES

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt

requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY

Mark Hafner, City Manager
City of Keller
P.O. Box 770
Keller, Texas 76244

COMPANY

Manager of Public Affairs
Atmos Energy Corp.,
Mid-Tex Division
1550 Tech Centre Pkwy
Arlington, Texas 76014

With a copy to :
L. Stanton Lowry
City Attorney
City of Keller
4201 Wingren, Suite 108
Irving, Texas 75062

SECTION 11. PARAGRAPH HEADINGS, CONSTRUCTION

The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION 12. CONDITIONS OF OCCUPANCY

(A) All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force and that may hereafter be adopted by the City relating to the use of its Public Rights-of-Way. This Franchise Ordinance shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal Law.

(B) If the City believes that Company has failed to comply with any operational or maintenance standards as required by this Franchise Ordinance, City shall give the Company written notice of such failure to comply. Company shall have the opportunity to cure such failure during a period not to exceed five (5) working days from receipt of the written notice.

If the Company fails to cure the alleged failure to comply within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five (5) working days prior to the posting date of the agenda for the City Council meeting at which such alleged failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, Company may be subject to termination as outlined in Section 24 .

SECTION 13. RELOCATION OF COMPANY EQUIPMENT

(A) Whenever by reason of widening or straightening of streets, water or sewer line projects, or any other public works projects in which beautification is not a purpose of the project (e.g., installing or improving storm drains, water lines, sewer lines, etc.), it shall be deemed necessary by City to remove, alter, change, adapt, or conform the underground or aboveground System Facilities of Company to another part of the Public Rights-of-Way, such alterations shall be made by Company at Company's expense in accordance with ordinances of the City of Keller.

(B) If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 14. LAYING OF LINES IN ADVANCE OF PUBLIC IMPROVEMENTS

(A) Whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes, the Company will be provided the opportunity, at no expense to the City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located.

(B) The Company shall be given written notice of the intention of the City to make public improvements in any such Public Right-of-Way. Within one hundred twenty (120) days from receipt of such notice, the Company, if it has determined a need, shall initiate work and thereafter proceed in a workmanlike manner to completion of the necessary work. If the Company should fail to so proceed, and such street or alley is thereupon paved, except in an emergency or in response to a request for initiation of new service, the Company shall for two (2) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose. All pavement cuts or excavations within the two (2) year period, except in response to an emergency, shall be performed only upon written permission of the Director of Public Works under such terms and conditions as the Director of Public Works may prescribe. Company shall give notice to the City of emergency work as soon as possible after the commencement of such work. Notice shall be given by contacting the City personnel designated by the City for this purpose.

SECTION 15. INSTALLATION OF METERS

If a meter is to be installed in or near the Public Rights-of-Way, Company agrees to discuss with the Public Works Director or his/her delegate the aesthetics of the meter placement. If the City requires a meter upgrade, the Company will comply so long as the City reimburses the Company for the reasonable costs incurred by the Company in changing meters; provided, however, that in no event shall underground meters be required.

SECTION 16. EXTENSIONS FOR CUSTOMERS

Company shall extend distribution mains in any street up to one hundred (100) feet for any one residential or commercial customer so long as the customer at a minimum uses gas for unsupplemented space heating and water heating. Company shall not be required to

extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION 17. DUTY TO SERVE

The Company hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for the Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of the City or its designee, said hearing to be held within forty-five days from the date of the request for hearing. The Council may order the Company to provide service or take any other action necessary to bring the Company into compliance with the intent of the Council in granting this Franchise. The Council may render its opinion at its next regular meeting but in no event shall it be required to act in less than seven (7) days.

SECTION 18. RATES

Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor; and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with the City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extension policies. The rates and charges collected from its customers in the City shall be subject to revision and change by either the City or Company in the manner provided by law.

SECTION 19. PAYMENTS TO THE CITY

(A) In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided for in subsection (B) of this section, such payments shall be made on an annual basis, on or before the first day of April, 2020, and on or before the same day of each succeeding year during the term of this franchise the last payment of the initial term being made on the 1st day of April, 2029, for the privilege period of calendar year 2029. The franchise fee shall be a sum of money that shall be

equivalent to five percent (5%) of the Gross Revenues, as defined in definition section of this franchise, for the preceding calendar year.

(B) The franchise fee amounts based on “Contributions in Aid of Construction” (“CIAC”) shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment will be due on or before April 30, 2021, and will be based on the calendar year January 1 through December 31, 2020. The final payment of franchise fee amounts based on CIAC for the initial term will be April 30, 2030, for the calendar year ending December 31, 2029.

(C) It is also expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a special or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company’s agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

(D) If the Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest at the current prime rate per annum from such due date until payment is received by City.

(E) Company may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fee under this Agreement. City agrees that (i) as a regulatory authority, it will adopt and approve the ordinance, rates, or tariff which provide for 100% recovery of such franchise fees as part of Company’s rates; (ii) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company’s franchise fees is an issue, City will take an affirmative position supporting 100% recovery of such franchise fees by Company; and (iii) in the event of an appeal of any such regulatory

proceeding in which City has intervened, City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company. City further agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.

(F) Lease of Facilities Within City's Rights-of-Way. Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its Facilities within the City's Public Rights-of-Way provided: (i) Company first notifies the City of the name of the lessee, licensee or user, the type of service(s) intended to be provided through the Facilities, and the name and telephone number of a contact person associated with such lessee, licensee or user; and (ii) Company makes the franchise fee payment due on the revenues from such lease pursuant to the Section titled "Payments to the City" of this Ordinance. This authority to lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees, or similar Public Right-of-Way user fees.

(G) City shall within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by the City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the city limits no later than sixty (60) days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments.

SECTION 20. BOOKS AND RECORDS

(A) Company agrees that at the time of each annual payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar year as defined in the definition Section of this franchise. City shall be entitled to treat such statement as though it were sworn and signed by an officer of Company.

(B) City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein. The Company shall make available to the auditor such

personnel and records as the City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefor. The Company shall assist the City in its review by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If such an examination reveals that Company has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with the Section titled "Payments to the City" subsection (D). Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

(C) If, after receiving reasonable notice from the City of the City's intent to perform an audit as provided herein, the Company fails to provide data, documents, reports, or information required to be furnished hereunder to the City, or fails to reasonably cooperate with the City during an audit conducted under the terms hereunder, the Company shall be liable for payment of a fee as set forth herein. The City shall give the Company written notice of its intent to impose a fee and shall provide Company with a period to cure its failure, such period not to exceed five (5) working days. If the Company fails to cure the alleged failure within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five (5) working days prior to the posting date of the agenda for the City Council meeting at which such failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with the requirements of this Section, Company may be subject to termination as outlined in Section 24 entitled "Termination."

SECTION 21. RESERVATION OF RIGHTS: GENERAL

(A) The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

(B) The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas for light, heat, and power for City and the inhabitants thereof.

(C) City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City and inhabitants thereof.

(D) Nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the City as same now exists or as such limits may be extended from time to time hereafter.

SECTION 22. RIGHT TO INDEMNIFICATION, LEGAL DEFENSE AND TO BE HELD HARMLESS

(A) In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless the City, its officers, agents, and employees (City and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations.

(B) The Company's obligation to indemnify Indemnitees under this Franchise Ordinance shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees. In such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees.

By entering into this Franchise Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas law or waive any of the defenses of the parties under Texas law.

(C) Except for instances of the City's own negligence, City shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Company's construction, reconstruction, maintenance, repair, use, operation or dismantling of System or Company's provision of service.

(D) In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all reasonable and necessary defense costs incurred by Indemnitees.

SECTION 23. INSURANCE

The Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise, unless a specific amount is required by the City's Right-of-Way Management Ordinance or other ordinance addressing right-of-way usage, in which case said Ordinance shall prevail. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an

approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to the City. The Company will require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured, and any excess coverage will name the City as an additional insured up to the amounts required by the City's Right-of-Way Ordinance.

SECTION 24. TERMINATION

(A) Right to Terminate. In addition to any rights set out elsewhere in this Franchise Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the Franchise.

(B) Procedures for Termination.

(1) The City may, at any time, terminate this Franchise for a continuing material violation by the Company of any of the substantial terms hereof. In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by certified mail, addressed and delivered to the Company at the address set forth in the Section titled "Notice" hereof. The Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided notice in writing at least fifteen (15) working days prior to any public hearing concerning the termination of the Franchise.

In addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Company.

(3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION 25. RENEGOTIATION

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION 26. SEVERABILITY

This Ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this Ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

SECTION 27. NO WAIVER

Either City or the Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 28. EFFECTIVE DATE

This Franchise shall be effective on _____, 2020, if Company has filed its acceptance as provided by Section 5 titled "Acceptance of Terms of Franchise" herein.

Passed and approved on the 7th day of July, 2020, by a vote of _ to _ at a regular meeting of the City Council of the City of Keller, Texas.

ATTEST:

CITY OF KELLER

Kelly Ballard, TRMC, CMC, City Secretary

Pat McGrail, Mayor

APPROVED AS TO FORM:

L. Stanton Lowry, City Attorney