

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF ARCADIA, COUNTY OF IRON, MISSOURI, TO LIBERTY UTILITIES (MIDSTATES NATURAL GAS) CORP. D/B/A LIBERTY UTILITIES, ITS SUCCESSORS AND ASSIGNS, FOR THE RIGHT TO SUPPLY, FURNISH, SELL, AND DISTRIBUTE NATURAL GAS TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN, AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO SUPPLY, FURNISH, SELL, AND DISTRIBUTE GAS TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND IN THE TERRITORY ADJACENT THERETO AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARCADIA, IRON COUNTY, MISSOURI, AS FOLLOWS:

#### ARTICLE I

##### Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

1.1 "Council" or "City Council" refers to and is the governing body of the City.

1.2 "City" refers to and is the City of Arcadia, Iron County, Missouri, and includes the territory as currently is or may in the future be included within the boundaries of the City of Arcadia.

1.3 "Company" refers to and is Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty Utilities and its successors and assigns.

1.4 "Facilities" refer to and are all facilities reasonably necessary to provide natural gas into, within and through the City and include plants, works, systems, lines, equipment, pipes, mains, conduit, underground links, gas compressors, appliances, and meters.

1.5 "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, or any mixture thereof.

1.6 "Missouri Public Service Commission" or "PSC" refers to and is the state regulatory commission of the State of Missouri or other authority succeeding to the regulatory powers of the PSC.

1.7 "Revenues" refer to and are those amounts of money which the Company receives from its customers within the City for the sale of gas under rates, temporary or permanent, authorized by the PSC and represent amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections, or other regulatory adjustments.

1.8 "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes, casements, public ways, sidewalks, and other public places in the City.

## ARTICLE II

### Grant of Franchise

2.1 Grant of Franchise. The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Ordinance, the right, privilege, franchise, permission and authority to construct, maintain, operate, replace, excavate for, and extend in the present and future Streets and Other Public Places as are now within the present or future limits of the City, a natural gas distribution system for the purpose

of furnishing, transporting, selling and distributing natural gas to the City and to all persons, businesses and industries within the City and beyond the limits of the City, including the right to acquire, construct, install, locate, maintain, replace, excavate, operate and extend into, within and through all Streets and Other Public Places all facilities reasonably necessary for the transmitting, transporting, distributing and supplying natural gas to the City and to all persons, businesses and industries both within the City and beyond the city limits of the City or to any other point, through or beyond the city limits of the City. The terms and conditions of Ordinance No. 205 are superseded by the terms and conditions hereof.

2.2 Term of Franchise. The term of this franchise shall be for twenty (20) years from the date of acceptance by the Company.

2.3 Effective Date and Acceptance. This Ordinance shall become effective upon its final passage and approval by the City, in accordance with applicable laws and regulations, and upon acceptance by the Company by written instrument within sixty (60) days of passage by the governing body and filed with the City Clerk of the City of Arcadia. If the Company does not, within sixty (60) days following passage of this Ordinance, express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, the Company shall be deemed to have accepted this Ordinance and all of its terms and conditions.

### ARTICLE III

#### Franchise Fee

3.1 Franchise Fee. In consideration for the grant of this franchise, the Company shall collect and remit to the City a sum equal to five percent (5%) of the revenues derived annually from the sale of gas within the City, excluding the amount received from the City itself for gas service furnished it, which fee the Company and the City agree is adequate compensation.

Annual franchise fee payments shall be made on or before March 1 for the preceding calendar year ending December 31. Payments at the beginning and end of the franchise shall be prorated. The franchise fee herein contemplated shall be uniformly and equally applied to all natural gas utilities, of like services, or any other natural gas service that competes with the Company, such that Company will be excused from collecting and paying franchise fees and/or taxes if Company's competitors are not also required to do so. In order to utilize this "nonpayment clause," the Company must notify the City that the franchise fee is not being uniformly applied to all natural gas utilities and the City will be given one year from the date of notice to cure the defect.

3.2 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters, facilities, or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof.

3.3 Notification by City. If during the term of this franchise the boundaries of the City are expanded, the City will promptly notify the Company in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to the Company by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as the Company may reasonably require in ascertaining whether there exist any customers of the Company receiving natural gas service in said annexed area. To the extent there are such customers therein, then the revenue of the Company derived from the retail sale of natural gas to such customers shall

become subject to the franchise fee provisions hereof effective on the first day of the Company's billing cycle immediately following the Company's receipt of the Annexation Notice. The failure by the City to advise the Company in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve the Company from any obligation to remit any franchise fees to the City based upon revenues derived by the Company from the retail sale of natural gas to customers within the annexed area prior to the City delivering an Annexation Notice to the Company in accordance with the terms hereof.

#### ARTICLE IV

##### Conduct of Business

4.1 Conduct of Business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Missouri and/or the City.

4.2 Tariffs on File. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PSC. Said tariffs shall be available for inspection by the public.

4.3 Compliance with PSC Regulations. The Company shall comply with all rules and regulations adopted by the PSC with respect to natural gas services. All utility services shall conform with the PSC rules and regulations, as well as any other applicable rules and regulations, federal laws, state laws and city ordinances. The rates which are to be charged by the Company for natural gas service hereunder shall be those which are now lawfully approved or prescribed, and as said rates may, from time to time, be hereafter lawfully approved and prescribed by the PSC or other regulatory authority

having jurisdiction thereof.

4.4 Compliance with Company Tariffs. The Company shall furnish gas within the City to the City and to all persons, businesses, and industries within the City at the rates and under the terms and conditions set forth in its tariffs on file with the PSC.

4.5 Applicability of Company Tariffs. The City and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PSC are controlling over any inconsistent provision in this franchise or any other contract or agreement dealing with the same subject matter.

## ARTICLE V

### Construction, Installation & Operation of Company Facilities

5.1 Location of Facilities. Company facilities shall not interfere with the City's water mains, sewer mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition. The City Council acknowledges that as of the date of this Ordinance the Company and its facilities are in compliance with the provisions of this Section 5.1.

5.2 Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals, and the Company shall obtain an excavation permit from the City before any work begins. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable state, federal and municipal codes, including the "Manual on Uniform Traffic Control Devices" and gas mains shall be installed prior to paving of streets in new developments and /or street extensions so long as such gas main installations are installed in accordance with the

applicable rules and regulations approved by the PSC. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to public and private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the City.

5.3 Maintenance of Streets and Roads. The Company shall do no injury to any highway, road, street, avenue, alley, lane, bridge, stream, or the water course, park or public place as a result of the Company's negligence. As such, no permit fees or inspection fees shall be imposed upon the Company and/or consumers for the breaking or opening of any highway, road, street avenue, alley, lane, bridge, stream or water course, park or other public places, or for the laying of any main, service pipe or other connections therein.

5.4 Relocation of Company Facilities. If at any time the City requests the Company to relocate any distribution gas main or service connection installed or maintained in streets or other public places in order to permit the City to change street grades, pavements, sewers, water mains or other public place for a public purpose, upon reasonable notice, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense if the request is primarily for non-public purposes or the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely

for the convenience of the City or other right-of-way user. The Company shall coordinate with the City to ensure the gas utilities are located so that any future relocation will be minimized. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense.

5.5 Service to New Areas. If during the term of this franchise the boundaries of the City are expanded, then any extension of service to the newly incorporated areas by the Company shall be in accordance with the provisions of Company's tariffs then in effect and on file with the PSC.

5.6 Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

5.7 Supply and Quality of Service. The Company shall make available an adequate supply of gas to provide service in the City. The Company's facilities shall be of sufficient quality, durability, and redundancy to provide adequate and efficient gas service to the City.

5.8 Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein. The Company agrees to comply with all such regulations in the construction, maintenance and operation of its facilities and in the provision of gas within the City.

5.9 Inspection, Audit and Quality Control. The City shall have the right to inspect, at all times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records



relevant to compliance with any terms of this Ordinance at all times. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner.

## ARTICLE VI

### Miscellaneous

6.1 Assignment. The Company shall have the right and power to assign to any other person or persons any and all rights conferred upon it by the terms of this Ordinance, after it has installed, erected, and built a gas distribution system; provided that a mortgage or trust deed or judicial sales made thereunder or under tax sales or the transfer of this Ordinance to a subsidiary shall not be deemed an assignment within the meaning of this Section. Any assignee of the rights of the Company herein, by accepting such assignment, shall thereby become subject to all of the terms, conditions, and provisions of this Ordinance; and in the event of any assignment by the Company of the rights hereby conferred upon it, such assignment shall be in writing and a duly authenticated copy thereof shall be filed in the office of the City Clerk of the City.

6.2 Saving Clause. If any portion of this franchise Ordinance is declared illegal or void by a court of competent jurisdiction, the remainder of the Ordinance shall survive and not be affected thereby.

6.3 Force Majeure. It shall not be a breach or default under this Ordinance if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3)

governmental actions such as necessity for compliance with any court order, law, statute, ordinance, executive order, or regulations promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

6.4 Hold Harmless. The Company, during the time of this Ordinance, agrees to save harmless the City from and against all claims, demands, losses and expenses arising directly out of the negligence of the Company, its employees or agents, in the constructing, operating and maintaining of distribution and transmission facilities or appliances of the Company; provided, however, that the Company need not save harmless the City, and the City shall save and hold the Company harmless, from claims, demand, demands, losses and expenses arising out of the negligence of the City, its employees or agents. If, as a result of any challenge to the validity or enforcement of this Ordinance, the collection of the franchise fee is found to be unlawful, the City shall be responsible for any and all refunds and reimbursements, with applicable interests, required as a result of such unlawful collection.

6.5 Repeal of Conflicting Ordinances. All ordinances or parts of ordinances m conflict herewith are hereby repealed.

FIRST READING: 4/yes O-Nay.

SECOND READING: 4/yes O-Nay.

PASSED AND APPROVED this 19 day of February, 2024, by a vote of Board of Aldermen



City of Arcadia, Missouri

By: [Signature]  
Mayor-Pro Tem

ATTEST:

[Signature]  
City Clerk