

BILL NO. 1

ORDINANCE NO. 021308-1

AN ORDINANCE AUTHORIZING THE CITY OF PATTONSBURG TO ENTER INTO A FRANCHISE AGREEMENT WITH MISSOURI GAS UTILITY, INC.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF PATTONSBURG, MISSOURI AS FOLLOWS TO WIT:

SECTION 1: The Mayor and Clerk of the City of Pattonsburg, Missouri are hereby authorized on behalf of the City of Pattonsburg, Missouri, to sign the Franchise Agreement attached hereto as Exhibit A and made a part hereof with Missouri Gas Utility, Inc. for a natural gas franchise for the City of Pattonsburg.

SECTION 2: This ordinance repeals any prior ordinance or parts of any prior ordinance that might be in conflict herewith.

SECTION 3: This ordinance shall be in full force and effect from and after the date of its passage and approval.

Read two times, passed and approved on the 13th day of February, 2008.

Attest:

Karen Shepherd
City Clerk

Jim E. Walker
Mayor

FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is between the City of Pattonsburg, hereinafter referred to as "Franchising Authority" or "City" and Missouri Gas Utility, Inc., hereinafter referred to as "Grantee."

The Franchising Authority, having determined that the Grantee has substantially complied with the financial, legal, and technical ability and is able to provide the services, facilities, and has the equipment necessary to meet the natural gas distribution needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a natural gas distribution system on the terms set forth herein.

SECTION 1 Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. 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:

- A. "Customer" means a Person who lawfully receives natural gas service from Grantee with the Grantee's express permission.
- B. "Franchising Authority" means the City of Pattonsburg or the lawful successor, transferee, or assignee thereof.
- C. "Grantee" means Missouri Gas Utility, Inc., or the lawful successor, transferee, or assignee thereof.
- D. "Gross Revenues" mean any revenue received by the Grantee from the operation of the Natural Gas Distribution System to provide natural gas service in the Service Area. Gross Revenues shall not include: any tax, fee or assessment of general applicability collected by the Grantee from Customers for pass-through to a government agency, including Franchise Fees, refundable deposits, bad debt, late fees, investment income, or unrecovered bad debt.
- E. "Natural Gas Distribution System" shall mean the Grantee's facility, consisting of buried main and service pipelines made of steel and/or Polyethylene pipe in mid and high densities and above ground facilities such as regulator stations or other appurtenances, all constructed to DOT OPS part 191 & 192 specifications, with natural gas meters installed at each customer location above ground.
- F. "Person" means an individual, partnership, limited liability company, association, joint stock company, trust, corporation, or governmental entity.
- G. "MPSC" shall mean the Missouri Public Service Commission.
- H. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including,

but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Natural Gas Distribution System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Natural Gas Distribution System and other property as may be ordinarily necessary and pertinent to the Natural Gas Distribution System.

- I. "Service Area" means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 3.8.

SECTION 2 Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Natural Gas Distribution System in, along, among, across, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Natural Gas Distribution System.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. Grantee reserves the right to challenge the provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

2.3 Equal Protection. The Franchising Authority shall not authorize or permit any Person to enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Natural Gas Distribution System or providing natural gas services to any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

2.4 Term. The Franchise granted hereunder shall be for an initial term of twenty (20) years commencing on the effective date of the Franchise as set forth in Section 9.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5 Service by Grantee. Grantee shall at all times during the term hereof make such reasonable extension of its gas mains from time to time, and install such service connections to the curb lines in streets and to property lines as may be reasonably required in order to furnish gas

service to applicants located within the corporate limits of the Franchising Authority and all under such reasonable rules, regulations, and conditions, as the governing body of said may from time to time prescribe. These extensions shall be provided in accordance with the tariffs of the Grantee, on file with the MPSC.

Grantee shall supply the Franchising Authority and the inhabitants thereof, in accordance with the accepted standard of the industry, gas service to provide for their needs during the term of this franchise, unavoidable accidents and delays and other causes beyond the control of the Grantee excepted. In the event that such service is not given by the Grantee, all rights under this franchise may be terminated and be forfeited. This service shall be provided in accordance with the tariffs of the Grantee, on file with the MPSC.

The rates that shall be charged by the Grantee for gas shall be fair and reasonable and such as may from time to time hereafter be lawfully fixed by the MPSC, all in accordance with law.

2.6 Expense of Installation. Grantee agrees that it will, at its expense, furnish, install, maintain, and keep in proper adjustment and repair, meters of modern approved type upon the property of each consumer of gas, that the same shall be read regularly at intervals of approximately monthly and Grantee shall render statements to each consumer based upon such meter readings in accordance with Grantee's filed tariffs. Grantee shall, upon request of the Franchising Authority, cooperate in the study of establishment of joint meter reading and billing with the utility department of the City upon reasonable terms and conditions. The Grantee shall maintain at its office accurate, complete, and detailed records of such meter readings, for a period of at least five years. The Grantee, at its own expense, shall make careful and accurate tests of each meter at reasonable intervals, or as may otherwise be required by the MPSC, at specific instances, and shall keep accurate records of the result of such tests. The Franchising Authority, by its authorized agents and representatives, shall have the right and authority to make tests of such gas meters and other equipment and to check the Grantee's tests and readings of meters at such times as it may see fit, and without charge, use Grantee's equipment to make such tests.

2.7 Eminent Domain. The Grantee shall have powers of eminent domain and regulation of the method of doing business by the Grantee as may from time to time be provided for by law, as permitted by Missouri law.

SECTION 3 Standards of Service

3.1 Conditions of Occupancy. The Natural Gas Distribution System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Work in and Restoration of Public Ways. All work in Public Ways, including restoration thereof, shall be undertaken pursuant to the Franchising Authority's generally applicable regulations or any replacement regulations thereto, provided that any such amendment or replacement regulation shall be reasonable and not destructive of the rights granted in this Franchise, and shall be consistent with the Franchising Authority's lawful police powers. Grantee reserves the right to challenge the provisions or any such regulation that it believes is inconsistent with the applicable law or its contractual rights under this Franchise either now or in the future. If during the course of the Grantee's construction, operation, or maintenance of the Natural Gas

Distribution System there occurs a disturbance of any Public Way by the Grantee, at its expense the Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. Grantee's restoration shall be guaranteed for one (1) year.

3.3 Relocation at Request of the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than thirty (30) business days, the Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property. If funds are available to any Person using such Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make application for such funds on behalf of the Grantee. Upon any such request to relocate, the Franchising Authority will provide at its expense sufficient right-of-way to relocate the desired system.

3.4 Relocation at Request of Third Party. The Grantee shall, on the request of any Person holding a building permit issued by the Franchising Authority, temporarily or permanently relocate a portion of the Natural Gas Distribution System provided: (A) the expense of such temporary or permanently relocating such portion of the gas pipes, meters and/or valves is paid by said Person, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to reasonably trim trees or other natural growth within the Public Way in order to access and maintain the Natural Gas Distribution System.

3.6 Safety Requirements. Construction, operation, and maintenance of the Natural Gas Distribution System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations. The Natural Gas Distribution System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 Access to Open Trenches. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench.

3.8 Required Extensions of the Natural Gas Distribution System. Grantee agrees to provide natural gas service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for natural gas distribution service from a Customer in a contiguous unserved area where there are at least ten (10) residences within one-quarter mile from the portion of Grantee's system which is to be extended, the Grantee shall then extend its Natural Gas Distribution System to such Customers.

Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Natural Gas Distribution System into any portion of the Service Area where another operator is providing Natural gas Service; into any annexed area which is not immediately adjacent to the present Service Area of the Grantee; or, into any area which is financially or technically not feasible due to extraordinary circumstances, such as a river, mountain, runway or highway crossing.

3.9 Customer Charges for Extensions of the Natural Gas Distribution System. No Customer shall be refused service arbitrarily, however, if an area does not meet the density requirements of Section 3.8 above, the Grantee shall only be required to extend the Natural Gas Distribution System to Customer(s) in that area if the Customer(s) are willing to share the capital costs of extending the Natural Gas Distribution System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Customers be paid in advance. Customers shall also be responsible for any Standard/non-Standard Installation charges to extend the Natural Gas Distribution System from the tap to the residence.

3.10 Natural Gas Distribution Service to Public Buildings. The Grantee, upon written request, shall provide without charge, a Standard Installation and one outlet of natural gas service to those Franchise Authority's administrative buildings owned and occupied by the Franchise Authority's, fire station(s), police station(s), and state accredited K-12 public school(s) that are passed by its Natural Gas Distribution System. Only the installation shall be without charge. The Franchising Authority shall be liable for gas consumed at the tariffs established by the MPSC. The Natural Gas Distribution Service provided shall not be distributed beyond the originally installed walls without authorization from Grantee. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Natural Gas Distribution System in any manner that results in the inappropriate use thereof or any loss or damage to the Natural Gas Distribution System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Natural Gas Distribution Service required by this Section. The Grantee shall not be required to provide natural gas to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Natural Gas Distribution System extension and/or non-Standard Installation. If additional natural gas lines are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

3.11 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

3.12 Use of gas mains. The Grantee may distribute gas to other persons or corporations beyond the corporate limits of the Franchising Authority by and through gas mains and pipes within the boundaries thereof, subject, however, at all times, to priority of right to continued satisfactory and adequate supply of gas to users and customers within the said Franchising Authority.

SECTION 4
Regulation by the Franchising Authority

4.1 Franchise Fee.

- A. After the Grantee has at least eighty (80) customers receiving natural gas the Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5.0%) of Gross Revenues (as defined in Section 1.1 of this Franchise). The franchise fee shall be for the calendar year. The payment of the franchise fee shall be quarterly and payable within forty-five (45) days following the close of the preceding calendar quarter. The Company shall include a statement with the payment indicating the Gross Revenues for the quarter. So that the franchise fee is not a competitive detriment to Grantee, the Grantee shall have no obligation or duty to pay the franchise fee for any period that the cost of natural gas plus the franchise fee to its customers is greater than the cost to customers of hydrocarbon fuels, such as propane and fuel oil, within the area subject to this franchise. If the cost to customers for natural gas including the franchise fee is greater than the cost to customers for competing fuels then the Grantee shall not be required to pay such franchise fee during such time as the cost of natural gas plus the franchise fee is greater than the cost to customers receiving the competing fuels. During such period when the Grantee is not liable for the franchise fee the Grantee shall provide a statement as to the cost of natural gas plus an assumed franchise fee and a statement as to the cost of the competing fuels in lieu of the statement for franchise fees collected and owed. Such statement shall become final unless the Franchising Authority objects and provides supporting documentation to the contrary within ninety (90) days of receipt of such statement. The Grantee shall not be liable for any local sales or use taxes or other taxes or fees for the sale and distribution of natural gas.
- B. Such Franchise Fee may be assessed and charged by Grantee to Customer.
- C. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.
- D. The Grantee shall pay interest on late payments at the rate of eight percent (8%) per annum, plus the Grantee shall pay all costs of collection, including audit fees, attorney's fees, and court costs incurred by the Franchising Authority to recover any unpaid fees if the reported franchise fees due and the franchise fees paid are less than 98% of the amount determined by the audit.

4.2 Renewal of Franchise.

- A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be initiated at least six (6) months prior to the termination of this Franchise. If within six (6) months of the termination date neither party elects to terminate or modify this Franchise Agreement then it shall be automatically extended annually until such notice to extend or modify is made.

- B. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

4.3 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Natural Gas Distribution System or by its actions lawfully effects a transfer of ownership of the Natural Gas Distribution System to another party, any such acquisition or transfer shall be at the price determined pursuant as the usual and customary fair market value for such a system if the buyer was an operating natural gas utility that is not municipally owned. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Natural Gas Distribution System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Natural Gas Distribution System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Natural Gas Distribution System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.4 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Natural Gas Distribution System in order to secure indebtedness. However, in the event of a default and foreclosure by the secured party, such transfer shall be subject to the consent of the Franchising Authority, which consent shall not be unreasonably withheld. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within 120 days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5 Customer Service

5.1 Customer Service Standards. Grantee shall comply with Customer Service Standards as set forth by the MPSC.

5.2 Customer Privacy. Grantee shall fully comply with any provisions regarding the privacy rights of Customers contained in federal or state law.

5.3 Customer Contracts. Grantee shall not enter into a contract with any Customer that is in conflict with the terms of this Franchise. Upon written request, Grantee will provide to the Franchising Authority a sample of the Customer contract or service agreement then in use.

SECTION 6 Books and Records

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise that is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, and in order to enforce the provisions hereof. The Grantee shall not be required to provide Customer information in violation of any law or rule or regulation of the MPSC.

SECTION 7 Insurance and Indemnification

7.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$2,000,000 combined single limit for bodily injury and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this Section.

7.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Natural Gas Distribution System, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ninety (90) days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or gross negligence of the Franchising Authority.

SECTION 8 Enforcement and Termination of Franchise

8.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

8.2 The Grantee's Right to Cure or Respond. The Grantee shall have ten (10) days from receipt of the notice described in Section 8.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

8.3 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 8.4.

8.4 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in Section 8.1 through 8.3 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action that it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

8.5 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, forest fires, civil disturbances, power outages, labor disputes, terrorist activities, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide natural gas in the Franchising Authority and

which was not caused and could not have been avoided by the Grantee using reasonable efforts in its operations to avoid such results. This provision includes but is not limited to work delays caused by waiting for utility providers to service or monitor their meters to which the Grantee's Natural Gas Distribution System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Customers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Customers.

SECTION 9

Miscellaneous Provisions

9.1 Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

9.2 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

9.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: A) upon receipt when hand delivered with receipt/acknowledgment, B) upon receipt when sent certified, registered mail, or C) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Pattonsburg
City Hall
305 N. 2nd Ave.
Pattonsburg, MO 64670

The notices or responses to the Grantee shall be addressed as follows:

Missouri Gas Utility, Inc.
Attn: President
7810 Shaffer Parkway, Suite 120
Littleton, CO 80127

with a copy to:

Missouri Gas Utility, Inc.
Attention: General Counsel
7810 Shaffer Parkway, Suite 120

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section to the last known address of the Franchising Authority or the Grantee.

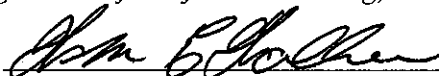
9.4 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.5 Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

9.6 Effective Date. The effective date of this Franchise is March 1, 2008, pursuant to the provisions of applicable law. This Franchise shall expire on February 27, 2028, unless extended by the mutual agreement of the parties.

Considered and approved this 13th day of February, 2008.

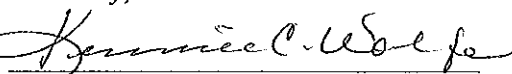
Franchising Authority: City of Pattonsburg, Missouri

Signature: 

Name/Title: Wm. E. Walker, Mayor

Accepted this 26th day of February, 2008, subject to applicable federal, state and local law.

Missouri Gas Utility, Inc.

Signature: 

Name/Title: Vice President