

FRANCHISE AGREEMENT

This Franchise Agreement (sometimes hereinafter referred to as the "Franchise" or the "Agreement") is between the City of Buffalo, Missouri, 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 Buffalo, Missouri 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 from commodity, PGA and monthly meter charges 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.

SECTION 2 Grant of Franchise

2.1 Grant. Subject to the terms and conditions set forth in this Agreement, 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. The Franchising Authority and the Grantee acknowledge that the rights, privileges and authority of the Grantee in this Franchise will never be deemed to be exclusive to the Grantee, and the Franchising Authority reserves the right to grant a similar use of such Public Ways to any person or corporation at any time during the term of this Franchise, provided that such grant does not materially interfere with the Grantee's physical ability to exercise the rights granted to is hereunder to lay and maintain its facilities necessary to the sale, transportation, and distribution of gas in and along the Public Ways. Furthermore, such rights, privileges and authority will be subject to ordinances and other rules and regulations of the Franchising Authority, and any other proper entity, currently in effect and as may be properly amended or enacted from time to time.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of all lawfully adopted generally applicable local ordinances, rules, regulations, and municipal code as are in effect as of the "effective date" of this Franchise or as such Ordinances or Code may hereafter be amended from time to time as generally applicable to all persons or firms who conduct business within the corporate limits 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. Notwithstanding the foregoing provisions, however, the Franchising Authority may authorize or permit another Person to take the foregoing actions so long as any terms or conditions offered to

such other Person are also formally offered and extended, in advance, to the Grantee, thereby affording the Grantee with the opportunity to either accept or decline identical terms to those offered to any other Person during the pendency of this Franchise.

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 9.10, 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 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 required in order to furnish gas service to applicants located within the corporate limits of the Franchising Authority and all under such rules, regulations, and conditions, as the governing body of said Franchising Authority 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 commercial and residential 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. Grantee assumes the economic risks associated with its services, and the profitability to the Grantee will not be taken into account as a cause beyond the Grantee's control for purposes of this Agreement. In the event that such service is not given by the Grantee, all rights under this franchise may be terminated and may be forfeited, and the Franchising Authority will have all rights available at law and in equity to seek relief from any damages caused by lack of such service by the Grantee. 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. The Grantee will provide to the City Administrator, or if such office is temporarily vacant, to the Mayor of the Franchising Authority, complete schedules of its current and future rates and rules and regulations as filed with the MPSC. Nothing contained herein shall be construed as waiving the rights of either the Franchising Authority or the Grantee to a review in the courts in such manner as is now or may hereafter be provided by law of any findings or order of the MPSC.

2.6 Deadline for Construction and Implementation of Distribution System. Notwithstanding any provision of this Agreement to the contrary, the Grantee will take substantial steps towards the design and implementation of and will actually begin construction and installation of the Natural Gas Distribution System within the corporate boundaries of the Franchising Authority prior to the expiration of three (3) years after the Effective Date of this Franchise; and in addition, the Grantee will have, at a minimum, a sufficient Natural Gas Distribution System completed, installed, and on-line within the corporate boundaries of the Franchising Authority as follows: (i) within five (5) years after the Effective Date of this Franchise, a percentage of the potential customers of the Grantee (including residences and businesses within the corporate limits of the Franchising Authority, collectively) equal to 25% of said potential customers will have immediate access to the Grantee's natural gas utility services; and (ii) within eight (8) years after the Effective Date of this Franchise, a percentage of the potential customers of the Grantee (including residences and businesses within the corporate limits of the Franchising Authority, collectively) equal to 75% of said potential customers will have immediate access to the Grantee's natural gas utility services; and (iii) within ten (10) years after the Effective Date of this

Franchise, a percentage of the potential customers of the Grantee (including residences and businesses within the corporate limits of the Franchising Authority, collectively) equal to 90% of said potential customers will have immediate access to the Grantee's natural gas utility services. In the event that the Grantee has not either commenced construction of or completed and installed the Natural Gas Distribution System as stated herein prior to the expiration of the applicable dates specified herein, then the governing body of the Franchising Authority will have the right, at its sole discretion, to immediately terminate all rights and obligations under this Franchise without recourse from or liability to the Grantee. In addition to the termination of the Franchise, the Franchising Authority will at all times retain any rights it may have to seek relief from any damages it may sustain caused by the Grantee's non-performance of this paragraph/sub-section, either at law or in equity. In seeking damages and terminating all rights pursuant to the terms of this Paragraph, the Franchising Authority will not be bound by the procedures and limitations found in Section 8 of this Agreement; however, the Franchising Authority will provide the Grantee with thirty (30) days advanced written notice of its decision to terminate, and will otherwise follow any procedures that may be imposed by Federal, State, or local law, rule, or regulation.

2.7 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.

2.8 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. Any lawful exercise of the powers of eminent domain by the Grantee will be in strict compliance with the provisions of Chapter 523 of the Revised Statutes of Missouri (2007), and the provisions of any other codified laws then existing in the State of Missouri at the time such powers of eminent domain are exercised.

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. In Installing and constructing the Natural Gas Distribution System, and any phase thereof, Grantee will follow all Federal, State, and local laws, rules and regulations; and Grantee will obtain any necessary approval from the governing body of the Franchising Authority prior to installation and construction. In addition, Grantee will comply with all of the Franchising Authority's Planning and Zoning and subdivision regulations and building codes; and the Grantee will cooperate with the Franchising Authority's

City Administrator, Zoning Administrator, and Director of Public Works in all phases of installation and construction.

3.2 Placement of Natural Gas Distribution System. In addition to the general requirement contained within Section 3.1 above, the Natural Gas Distribution System shall be set so that, at the time such Facilities are installed, they will not interfere with any existing water mains or sewer mains or City telecommunication facilities, parks, trees and other landscape plantings, or any other municipal use of the Public Rights of Way; provided, however, that the Franchising Authority may, upon written application by the Grantee and for good cause shown, relieve the Grantee on a case-by-case basis of its obligations under this sentence. Additionally, in setting its Natural Gas Distribution System, the Grantee shall make a reasonable attempt not to interfere with any existing facilities of entities lawfully occupying the Public Rights of Way. All such Grantee facilities shall also interfere as little as practicable with ordinary travel of the Public Rights of Way.

3.3 Emergency Excavation. The Grantee may excavate in the Public Rights of Way prior to obtaining a permit therefor in emergency situations only; provided, however, that the Grantee shall report all such excavations to the Director of Public Works and apply for a permit on the next business day following commencement of each such excavation. For purposes of this subsection, "emergency situations" are those where the health and safety of the citizens of the Franchising Authority are in imminent danger. The Grantee shall hold and save the Franchising Authority harmless from all loss and damage by reason of such emergency excavations as more fully provided elsewhere in this Franchise.

3.4 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 ordinances, rules, regulations or administrative orders or any replacements or amendments thereto, provided that any such amendments or replacements to the above mentioned items shall not be destructive of the rights granted in this Franchise, and shall be consistent with the Franchising Authority's lawful police powers. Grantee reserves any rights it may have, if any, to challenge the provisions of any such ordinance, rule, regulation or administrative order that is amended or replaced subsequent to the effective date of this Grantee that it believes is inconsistent with the applicable law or its contractual rights under this Franchise via any lawful means then available. However, it is expressly understood that the Franchising Authority does not concede that any such rights exist, and the Franchising Authority does not, by this Agreement, provide the Grantee with any additional rights to directly challenge the validity of any lawful municipal ordinance, rule, regulation or administrative order that the Grantee would not otherwise have as provided by the statutes and laws of the State of Missouri, it being understood that the Franchising Authority has a strong interest in being able to rely on the validity of all lawful ordinances, rules and regulations passed by its governing body, or lawfully adopted administrative orders; and any proposed challenge to an otherwise lawful ordinance, rule, regulation or administrative order may prejudice the Franchising Authority or subject it to adverse liability from its residents or other third parties in one or more ways that cannot be contemplated as of the effective date of this Agreement.. Nothing in this paragraph/sub-section regarding the limitation on the Grantee's right to directly challenge the validity of a lawful ordinance, rule, regulation or administrative order of the Franchising Authority will be deemed to affect the Grantee's right, where available by law or contract, to initiate other lawful procedures to address a perceived violation of the terms of the Franchise.

If during the course of the Grantee's construction, operation, or maintenance, or removal at any time 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 comparable to the condition of the Public Way existing immediately prior to such disturbance. The scope of restoration will include, but not necessarily be limited to, the following: the Grantee shall refill all trenches in which its distribution system is located in accordance with applicable City ordinances. The Grantee shall replace and restore, at no expense to the Franchising Authority, the City-owned pavement, sidewalks, curbs and grassed areas disturbed, destroyed or injured by such Grantee work with like materials and to at least their former condition. If such City-owned pavement, sidewalks, curbs or grassed areas shall have been laid under any guarantee for their maintenance and repair for a period of time, the Grantee shall also keep the restored pavement, sidewalks, curbs and grassed areas in repair for such period as specified on the permit issued to the Grantee as authorized or required by applicable City ordinance. In any event, all of Grantee's restoration pursuant to this Agreement shall be guaranteed for a period not less than one (1) year. The restoring of the pavement, sidewalks, curbs and grassed areas shall be subject to inspection by the Director of Public Works. After the restoration work has been completed, the Grantee shall promptly notify the Director of Public Works, in writing, that the same has been done. If, upon inspection, the Director of Public Works finds such work to be unsatisfactory, the Director of Public Works may condemn the same and the Grantee shall repair or replace the work at its cost within a reasonable amount of time as specified by the Director of Public Works; provided, however, that no such condemnation shall be made subsequent to the expiration of the Grantee's obligation to maintain the restored pavement, sidewalk, curb or grassed area as above provided, for a period not less than one (1) year. If the Grantee fails, neglects or refuses to refill such trenches and restore the City owned pavement, sidewalks, curbs and grassed areas to at least their former condition within the time specified in applicable City ordinances, then, after providing 72 hours' notice to the Grantee, the Franchising Authority may do all of such work at the cost and expense of the Grantee, for which the Grantee shall reimburse the Franchising Authority within a reasonable amount of time after the presentation of a bill therefor by the Franchising Authority. The Franchising Authority shall grant any request by the Grantee to extend the time to restore the City-owned pavement, sidewalk, curb or grassed area if the Franchising Authority determines that performance by the Grantee within the permitted time was rendered impossible because of events which were beyond reasonable control of the Grantee. Such extension shall be for the shortest period necessary to complete the restoration.

3.5 Scope of Excavation. The Grantee shall not open or encumber, at any one time, any more of the Public Rights of Way than may, in the opinion of the Director of Public Works, be reasonably necessary to enable it to proceed with advantage in laying or repairing its distribution system nor shall it permit any such Public Right of Way so opened or encumbered by it in the installation, construction or repair of its distribution system to remain open or encumbered for a longer period of time than shall, in the opinion of the Director of Public Works, be reasonably necessary. In all cases where any such Public Right of Way shall be excavated or encumbered by the Grantee, it shall take all precautions for the protection of the public, usual in such circumstances, and as may be required by general ordinances of the Franchising Authority, and the Grantee shall be solely responsible for all damages to persons and property on account of performing the aforesaid work in the Public Rights of Way, except Grantee will not be liable for any loss of sales or profit of such persons or property.

3.6 Subordination to Franchising Authority's Use of Easements. The Grantee's right to use its private and public easements shall be subordinated to the Franchising Authority's use of such easements, without causing delay to the Franchising Authority's project schedule. Nothing in this

sub-section shall be construed to affect the Grantee's ability to seek compensation for moving its Facilities at the request of third parties.

3.7 Relocation at Request of the Franchising Authority. Upon its receipt of 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, but (subject to Missouri Public Service Order to the contrary) such abandonment will not relieve Grantee of its obligations to provide the services specified herein within a reasonable period of time to the residents and businesses whose service is interrupted as a result of the notice from the Franchising Authority. during the term of this Agreement. 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; however, the preceding provisions will only apply if the availability of such funds are actually known to exist by the Franchising Authority during any applicable time period for which they could be applied for. Furthermore, the Franchising Authority will have no obligation to actively research or ascertain the availability of such funds on behalf of the Grantee, and Grantee will have the responsibility of making the availability of such funds known to the Franchising Authority in the event that the Franchising Authority does not otherwise have actual knowledge of the availability of such funds. For purposes of this Agreement, "actual knowledge" of the Franchising Authority means "direct and clear knowledge by the City Administrator, or if such office is temporarily vacant, by the Mayor of the Franchising Authority;" and "actual knowledge" for purposes of this Agreement does not include knowledge of such information as would lead a reasonable person to inquire further. In the event that the Franchising Authority makes application for funds on behalf of the Grantee pursuant to the terms of this paragraph, the Grantee will reimburse the Franchising Authority for the costs and expenses incurred by the Franchising Authority in making application for such funds. Upon any such request to relocate, the Franchising Authority will provide at its expense sufficient right-of-way to relocate the desired system. There shall be no liability for temporary failure to provide service for a reasonable period of time during the period of relocation, taking into account delays by the City in granting alternate rights of way, labor interruptions and *force majeure*.

3.8 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.

3.9 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.

3.10 Safety Requirements. Construction, operation, and maintenance of the Natural Gas Distribution System shall be performed in an orderly and workmanlike manner. All such work and maintenance shall be performed in substantial accordance with all applicable federal, state, and local regulations or other lawful authority, and generally accepted construction, operation and maintenance standards of the industry.

3.11 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 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.

3.12 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. The foregoing provisions of this paragraph will only apply if the availability of such funds are actually known to exist by the Franchising Authority during any applicable time period for which they could be applied for. Furthermore, the Franchising Authority will have no obligation to actively research or ascertain the availability of such funds on behalf of the Grantee, and Grantee will have the responsibility of making the availability of such funds known to the Franchising Authority in the event that the Franchising Authority does not otherwise have actual knowledge of the availability of such funds. For purposes of this Agreement, "actual knowledge" of the Franchising Authority means "direct and clear knowledge by the City Administrator, or if such office is temporarily vacant, by the Mayor of the Franchising Authority;" and "actual knowledge" for purposes of this Agreement does not include knowledge of such information as would lead a reasonable person to inquire further. In the event that the Franchising Authority makes application for funds on behalf of the Grantee pursuant to the terms of this paragraph, the Grantee will reimburse the Franchising Authority for the costs and expenses incurred by the Franchising Authority in making application for such funds.

3.13 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.

3.14 Coordination of Projects. In performing any activities described in this Section 3, the Grantee shall coordinate with other utilities or other governmental or private entities engaged in the construction, excavation, installation, maintenance, renovation, repair, adjustment, restoration,

relocation and replacement of utility facilities, so that as many of the activities are undertaken and completed as part of the same project as practicable.

3.15 Location of Natural Gas Distribution System. The Grantee shall promptly, upon requests from time to time made by the Director of Public Works, provide to the Director GIS maps or Plats (as may be appropriate for the Franchising Authority) of its Natural Gas Distribution System located in the areas of the City designated in the requests and shall, upon request, provide such assistance as may reasonably be necessary in physically locating the Natural Gas Distribution System.

3.16 Technological Improvements. The Grantee shall use reasonable efforts to incorporate and install technological advances into its equipment, administration and service, as well as into its conservation programs, when such advances have been shown to be technically and economically feasible and safe and beneficial.

SECTION 4 Regulation by the Franchising Authority

4.1 Franchise Fee.

- A. Upon commencing natural gas services to any of its customers pursuant to this Franchise, whether residential customers, commercial customers, or otherwise, the Grantee shall pay to the Franchising Authority a franchise fee equal to three percent (3.0%) 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 Grantee shall include a statement with the payment indicating the Gross Revenues for the quarter. In the event that the Grantee's rights under this Franchise are transferred or assigned with the Franchising Authority's consent pursuant to the terms stated herein, then any transferee, purchaser, or assignee, as the case may be, will be deemed to be the "Grantee" for purposes of this Agreement.
- 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.
- E. Such Franchise Fee is to be in addition to and not in lieu of all other fees, such as local sales taxes, permits, fees for street cuts, excavation permits, and personal property taxes (if any); but shall be in lieu of any local income taxes that may be lawfully adopted by the Franchising Authority in the future.

4.2 Renewal of Franchise.

- A. The parties acknowledge that the Franchising Authority is classified as a Missouri city of the fourth class as of the effective date of this Agreement. Pursuant to the provisions of § 88.770 RSMo. (2008), relating to Missouri cities of the fourth class, the Grantee's rights in this Franchise may not initially extend beyond the term of twenty (20) years. Any renewal of this Franchise for subsequent periods will not be automatic, and must affirmatively be ratified in accordance with the provisions of § 88.770 RSMo. (2008), or any other laws as may be in place regarding the renewal of franchises for gas works in Missouri cities of whatever classification is applicable to the Franchising Authority at the time that the Franchising Authority considers and ultimately decides the question of renewal of this Agreement.
- 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 this Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake informal negotiations regarding renewal of the Franchise ; however, no renewal of this Franchise will be binding upon either of the parties herein until such time as a proposed renewal has been affirmatively ratified in accordance with the provisions of § 88.770 RSMo., or any other laws as may be in place regarding the renewal of franchises for gas works in Missouri cities of whatever classification is applicable to the Franchising Authority at the time that the Franchising Authority considers and ultimately decides the question of renewal of this Agreement.

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, and subject to the provisions of § 88.770 RSMo. (2008), the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period, unless the twelve (12) month period would extend beyond the initial twenty-year term, in which case the Grantee's rights under this Franchise must terminate by law in any event immediately upon the expiration of the initial twenty-year term. If, at the end of the time afforded to the Grantee to effectuate a transfer to a qualified third party, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Natural Gas Distribution System which is 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, if the Grantee is allowed continued operation of the Natural Gas Distribution System during the time afforded to the Grantee to effectuate a transfer to a qualified third party pursuant to this section, then such operation shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee. For purposes of this Agreement, the Franchising Authority will not be deemed to have "acquired" the Natural Gas Distribution System due solely to any one

or more of the following circumstances: (i) the Grantee has abandoned the Natural Gas Distribution System; or (ii) the Franchise has been lawfully terminated for any reason by either party; or (iii) the Franchise has not been renewed as of the Agreement's expiration date. In addition, the Franchising Authority will only be deemed to have "acquired" the Natural Gas Distribution System upon execution of a separate writing, approved by the governing body of the Franchising Authority, evidencing the Franchising Authority's intention to take exclusive dominion and control over such Natural Gas Distribution System.

In the event that: (i) the Franchise is lawfully terminated for any reason, or is otherwise not renewed for any reason; and (ii) the Grantee fails to effectuate a transfer of its Natural Gas Distribution System pursuant to the foregoing provisions; and (iii) the Franchising Authority has not otherwise "acquired" the Natural Gas Distribution System, then the parties may avail themselves of any rights or remedies they may have pursuant to federal or state law in regards to the disposition of the Natural Gas Distribution System, or the parties may otherwise agree in a separate writing as to the disposition of the Natural Gas Distribution System.

4.4 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, without the prior consent of the Franchising Authority, and any transfer or assignment of Grantee's right, title, or interest may be subject to any requirements, if any, of voter approval as may be required by law at the time. 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; provided, that this sentence shall not be construed so as to require the Franchising Authority to approve the purchaser of the System at foreclosure, realization under a Security Interest or other successor under a security instrument of any type as the Grantee. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it 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, subject to any requirements, if any, of voter approval as may be required by law at the time.

4.5 Abandonment of Regulation by the MPSC. In the event that the MPSC, in the Franchising Authority's opinion, significantly reduces its regulation of or ceases to regulate any activity affecting any aspect of the Grantee's gas business within the Franchising Authority (including but not limited to rates for gas services, gas quality and pressure, metering, billing, gas shut-offs, repair and construction of the Grantee's Facilities, termination and reinstatement of service, gas for domestic and industrial purposes, transfer of the Grantee's Facilities, service during cold weather, affiliate relations, gas supply and distribution), the Franchising Authority shall, to the extent permitted by law, have the right to regulate any such Grantee activity.

4.6 Reports to the Franchising Authority. If the Grantee notifies the MPSC of any reportable incidents as required by applicable MPSC regulations or the Grantee's schedules and tariffs, the Grantee shall contemporaneously notify the Franchising Authority of any such reportable incidents occurring within the Franchising Authority.

4.7 Notification of Interrupted Service. The Grantee shall make a good faith effort to notify potentially affected customers prior to performing any work on its Natural Gas Distribution System that may result in an interruption of gas service to customers in the Service Area.

4.8 Compliance with Air, Water, and Noise Pollution Laws. The Grantee shall take measures which will result in its Natural Gas Distribution System and operations meeting the standards imposed by applicable city, county, state, and federal air, water and noise pollution laws and regulations, and laws and regulations governing the transportation of hazardous materials. Upon the Franchising Authority's request, the Grantee will respond to the Franchising Authority's reasonable questions regarding such measures.

4.9 Toll-Free Number for Emergencies. At least thirty (30) days prior to offering natural gas services to any customers within the Service Area, the Grantee shall establish a twenty-four hour toll free number to respond to emergency concerns (such as gas leaks) raised by its customers. Such toll free number shall be separate and distinct from the Grantee's telephone number for non-emergency matters (such as billing questions), and shall be listed in the local telephone directories and stated prominently on the Grantee's customer bills. Grantee will provide the Franchising Authority with its emergency call number for notification of the Grantee of any emergency calls that the Authority, or its emergency call system, may receive pertaining to or that may affect the Grantee's System.

4.10 Bankruptcy. In addition to all other rights, powers and remedies available to the Franchising Authority, the Franchising Authority shall have the separate and distinct right to revoke this Franchise and all the rights, authority, power, privileges and permissions granted to the Grantee under this Franchise, if the Grantee is adjudged to be bankrupt. However, should the Franchising Authority be prohibited from revoking this Franchise due to the Grantee's bankruptcy, the Grantee shall, as a means of assuring future payments of franchise fees and assuring future compliance with all other requirements of this Franchise, provide to the Franchising Authority within thirty (30) days of an order of a court of competent jurisdiction adjudging the Grantee to be bankrupt and entitled to the protection of state or federal bankruptcy laws, a bond in the amount of the franchise fees paid by the Grantee to the Franchising Authority the previous year.

4.11 Compatibility with Governmental Tariffs, Rules and Regulations. The Franchising Authority and the Grantee recognize that the lawful provisions of any applicable (1) rules and regulations of the MPSC and Federal Energy Regulatory Commission ("FERC") and (2) schedules and tariffs of the Grantee approved by and in effect with the MPSC and FERC are controlling over any inconsistent provision in this Franchise dealing with the same subject matter. The Grantee shall be affirmatively obligated to timely notify the Franchising Authority of any filing with the MPSC or the FERC, or with any proposed Rule or Order by the MPSC or FERC for which notice is provided to the Grantee, that can reasonably be expected to effect the Grantee's provision of service under this Agreement, including but not limited to any rate cases that may be filed with any regulating agency of the federal or state government.

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, including its elective and administrative officers, the city attorney, or the city's certified public accountants, 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 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 an amount that is no less than the maximum liability limits of the Franchising Authority under applicable state law and related rules and regulations. of and such policy will name the Franchising Authority as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. 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.** Except where otherwise provided in this Agreement, 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 general 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 substantial 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.** Except where otherwise provided in this Agreement, and 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 take any one or more of the following actions:

- A. Seek specific performance of any provision, which 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. Seek to revoke the Franchise in accordance with Section 8.4.
- D. Notwithstanding anything herein to the contrary, nothing in this Agreement will preclude the Franchising Authority from immediately seeking equitable injunctive relief in a court of law if, in the sole discretion of the Franchising Authority, such relief is necessary to prevent irreparable harm from breaches or threatened breaches of the terms of this Agreement.

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 general nature of the noncompliance. The Grantee shall have thirty (30) 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, or if after having received a response from the Grantee it is not persuaded to forego seeking termination of the Franchise, 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, any party may be represented by counsel and all parties will have an opportunity to be heard. As soon after the designated hearing as is practical, the Franchising Authority will determine, by written findings and conclusions, whether or not the

Franchise will be revoked. If available by law, the Grantee may seek judicial review of any decision made by the Franchising Authority regarding revocation of this Franchise; and such appeal to the appropriate court must be taken within thirty (30) days of the issuance of the determination of the Franchising Authority.

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.

8.6 Failure to Comply with Section 2.6. The provisions and procedures of Sections 8.1 through 8.5 above are not applicable to the Franchising Authority when exercising its rights pursuant to the provisions of Section 2.6 of this Agreement.

SECTION 9

Miscellaneous Provisions

9.1 Franchise Contingent Upon Ordinance and Voter Approval. If required by Missouri Law the effectiveness and enforceability of this Franchise for both parties is contingent upon: (i) the approval of this Agreement by the governing body of the Franchising Authority via a lawful ordinance expressly approving the same; and (ii) the approval of this Agreement and accompanying ordinance by the registered voters within the corporate limits of the Franchising Authority at election pursuant to § 88.770 RSMo. (2008). If such a vote is not required by Missouri law then this Agreement shall be effective and enforceable upon adoption of an ordinance authorizing and approving the Franchise by the Franchising Authority. With regards to the ordinance approving this Franchise, it is acknowledged that no such ordinance will be adopted by the governing body of the Franchising Authority until such time as the proposed ordinance has been on file with the Clerk of the Franchising Authority for at least thirty (30) days, and until such time as a full public hearing has been held thereon. With regards to the Franchising Authority's obligations to submit this Agreement to the voters, the parties have acknowledged the following: The Franchising Authority will not be obligated to submit the Franchise and the accompanying ordinance for voter approval at an election unless Grantee has filed its unconditional acceptance of this Franchise with the Clerk of the Franchising Authority at least one-hundred-twenty (120) days prior to the election, and the Franchise and the accompanying ordinance will not be submitted to a special election unless the expense of holding the election, as determined by the governing body of the Franchising Authority, shall have been paid into the city treasury by the Grantee. In the event that the governing body of the Franchising Authority does not approve this Franchise by ordinance, or in the event that the registered voters within the corporate limits of the Franchising Authority fail to approve the Franchise and the accompanying ordinance after election, then this Agreement will immediately be of no effect, and each of the parties will be released of all obligations without recourse.

9.2 Certificate of Public Convenience and Necessity. Within a reasonable time after an ordinance authorizing the Franchise is approved by the voters or Franchising Authority, as applicable, then the Grantee shall file for a Certificate of Public Convenience and Necessity ("CPCN") with the MPSC. If the MPSC does not grant a CPCN within 24 months after the Franchising Authority grants the Franchise to the Grantee and the CPCN does not include the City then this Agreement shall be null and void.

9.3 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.

9.4 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. To be effective, any future amendments to this Franchise must be mutually agreed to in writing by the parties, and will be subject to any requirements, if any, of voter approval as may be required by law at the time.

9.5 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 Buffalo
Attn: City Administrator
P.O. Box 410
Buffalo, MO 65622

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
Littleton, CO 80127

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.

9.6 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.

9.7 Severability. If any Section, sentence, paragraph, term, phrase, 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, phrase 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.

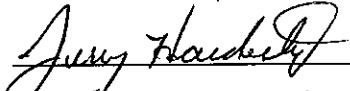
9.8 Governing Law and Venue. This Franchise Agreement will be construed and enforced under the laws of the State of Missouri and the rules and regulations of the MPSC, which shall supersede and control any provision to the contrary in this agreement. All parties to this Franchise Agreement agree that the primary venue for any court proceeding of any nature that may arise for the enforcement of or collection pursuant to this Franchise Agreement will be in the County of Polk, in the State of Missouri, and all parties hereby submit to the jurisdiction of the courts of Polk County, Missouri as the venue for adjudication of any disputes arising from the enforcement of or collection pursuant to this Franchise Agreement.

9.9 Waiver. All parties to this Agreement agree that the failure of any party to this Agreement to strictly enforce any term of this Agreement will not ever result in a waiver of such party to subsequently enforce the conditions of this Agreement.

9.10 Effective Date. The effective date of this Franchise is the date upon which the Franchise and the accompanying ordinance approving the same are adopted by the Board of Aldermen and approved by the Mayor of the Franchising Authority, and by the registered voters within the corporate limits of the Franchising Authority but such voter approval shall be necessary only if it shall be determined that such approval is required pursuant to the provisions of applicable law. This Franchise will remain effective for a term of twenty (20) years, including the effective date.

Considered and approved this 13th day of April, 2009.

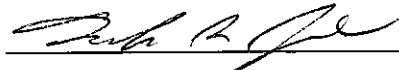
Franchising Authority CITY OF BUFFALO

Signature: 

Name/Title: JERRY HARDESTY / MAYOR

Accepted this 7th day of January, 2009, subject to applicable federal, state and local law.

Missouri Gas Utility, Inc.

Signature: 

Name/Title: Timothy R. Johnston, Executive Vice President