

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF MANOR, TEXAS GRANTING TO TEXAS COMMUNITY PROPANE, INC. THE RIGHT, PRIVILEGE, AND FRANCHISE TO USE STREETS, ALLEYS, AND ~~THOUROUGHFARES~~THOROUGHFARES TO OPERATE AND MAINTAIN A PROPANE DISTRIBUTION SYSTEM IN THE CITY OF MANOR, TRAVIS COUNTY, TEXAS; PROVIDING REGULATIONS FOR THE CONDUCT OF THE SYSTEM; MAKING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; AND AN EFFECTIVE DATE; AND PROVIDING FOR OPEN MEETINGS AND OTHER RELATED MATTERS.

WHEREAS, Texas Community Propane, Ltd., a Texas domestic limited partnership registered to do business in the State of Texas (the “Company”) desires to continue operating a propane gas utility system within the City of Manor, Texas (the “City”);~~and~~

WHEREAS, it is in the best interest of the City to offer the Company a franchise renewal on such terms and conditions as will provide the City with control and options necessary to provide for the public good;~~and~~

WHEREAS, after providing at least ten (10) ~~days~~days notice, a public hearing was held on this franchise renewal;~~and~~

WHEREAS, Chapter 121 of the Texas Utilities Code authorizes the City to adopt ordinances that establish conditions for mapping, inventorying, locating, or relocating pipelines over, under, along, or across a public street or alley or private residential area in the boundaries of the City;~~and~~

WHEREAS, the City strives to promote orderly and safe development within the territorial limits of the City; and

WHEREAS, the City Council of the City of Manor, Texas (the “City Council”) finds that this Ordinance authorizing the City to renew a franchise with Company under certain conditions is in the best interest of the health, safety, and welfare of the citizens of the City;~~;~~

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANOR, TEXAS, THAT:**

**SECTION 1. Findings of Fact.** That all of the above recitals and findings of fact are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

**SECTION 2. Grant of Franchise.** Subject to the terms and conditions of this Franchise

Ordinance, the right, privilege and franchise is hereby granted to the Company, and to its successors, lessees, and assigns, as are authorized and approved by ordinance, to have, own, acquire, install, construct, reconstruct, operate, maintain, use, and extend a system of mains, pipelines, conduits, valves, feeders, regulator stations, laterals, service lines, measuring devices, and all other necessary plants, attachments, land, structures facilities and appurtenances (hereinafter the "System") for the purpose of selling, storing, supplying, conveying, transmitting, distributing, and/or transporting propane gas ("Gas"), including the equivalent substitutes, for all other lawful purposes in, through, upon, under, and along the present and future streets, avenues, alleys, bridges, sidewalks, parks, easements, highways, and any other public places including any streams, water courses or water ways within the City limits of the City of Manor, Travis County, Texas (the "City"), and including any territory that the City may hereafter annex, acquire or purchase; and to distribute, sell, store, supply, transport, carry and/or convey Gas through the System in the City to other cities, towns, communities and areas outside the City and to inhabitants thereof, for the full term of this Franchise Ordinance. This Franchise Ordinance shall in no way affect or impair the present or future rights, obligations, or remedies of the City or Company under the Gas Utility Regulatory Act, Texas Utilities Code, Chapter 103, as amended.

**SECTION 3. Placement of Pipes and Facilities.** (a) The mainlines and service pipes of the Company shall be laid in alleys, streets, and avenues, and, public utility easements that allow the placement of gas mains, and when in streets and avenues, shall be laid parallel with the curb line thereof, or in such locations as shall be most practical, provided, however, that in no case shall any main be laid less than 24 inches below the established street grade, without permission of the City Engineer. The Company is hereby authorized, licensed, and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges granted by this Franchise Ordinance, provided the same do not conflict with existing infrastructure in the public ways. However, the Company agrees to give the City reasonable notice of the dates, location, and nature of work to be performed on the Company's facilities or gas system within the public ways or rights of way. Storage tanks having a capacity of 12,900 gallons or greater shall be buried underground. Storage tanks having a capacity of less than 12,900 gallons will be either above ground or buried on a case-by-case basis as determined by the Company and approved by the City Engineer. Temporary storage tanks of any size may remain on site above ground with approval from the City Engineer, provided such tanks do not remain at the site longer than fifteen (15) months. Company shall not construct, install or erect any facilities or equipment above ground on any such public property without specific written permission of the City Engineer, or other proper public authority.

(b) Except in the case of an emergency, when the Company shall desire to lay any mains hereunder, and before commencing its construction work, it shall submit to the City Engineer, or other proper authority, a pre-construction map or plan showing the streets, avenues, alleys, and other public places and the locations thereon wherein it proposes to construct such pipes and mains. The City Engineer, or other proper authority, shall respond

in writing to Company within a reasonable period of time, not to exceed twenty (20) business days, after Company's submission either approving or rejecting the plan, and if a rejection, listing the reasons for such rejection. Approval by the City Engineer, or other proper authority, shall constitute a permit to the Company for the opening of the streets, avenues, alleys, and other public places shown on the map or plan, and for the construction or laying of the mains and pipes by the Company (the "Permit") as shown on the plan. If the City Engineer, or other proper authority, does not respond within twenty (20) business days, the Permit shall be deemed denied. In the event that the Permit is denied, the City Engineer, or other proper authority, shall advise Company of the reasons for the denial and all necessary steps to secure approval of the Permit by resubmittal. Company shall have the right to immediately appeal the issuance of the Permit to the City Manager, and if not approved within ten (10) calendar days by the City Manager, the Company may appeal to the City Council and be heard at a public meeting held in compliance with applicable law. If the Council fails to act on the appeal within twenty-one (21) days, the appeal will be deemed to be denied unless agreed otherwise in writing by the Company and the City. Appeal of any decision made by the City Council shall be made to the District Court of Travis County, Texas. It shall not be necessary for Company to secure a permit for the laying of service pipes from the mainline pipes of the Company to its customers. This Section 2(b) shall also apply to all other facilities and equipment of the Company to be constructed or installed on public property within the City. Upon completion of the construction the Company shall file with the City Engineer, or other proper authority, the "as built" plans.

(c) In the refilling of all openings made by the Company, it shall restore the City public rights-of-way to a condition reasonably approximate to the original condition, and when the Company shall open any ground in the City rights-of-way, the Company shall open no more space nor keep the space open any longer than is reasonably necessary to properly execute the work for which such space shall have been opened. The Company shall at all times display and keep the necessary danger signals and barricades around all excavations and obstructions and shall keep sufficient space in good condition for the travel of automobiles, trucks, and other motor vehicles, on at least one side of all excavations and obstructions. The Company shall comply with all applicable City ordinances, rules, and regulations for the repair of cuts and excavations, as are applicable to all other franchisees of the City, however, in the event that any term or condition of this franchise conflicts with the City's comprehensive ROW ordinance, this franchise shall prevail.

(d) The Company shall not install any pipe, line or facility within any park or recreational land of the City without specific written permission. The Company may petition the Council for permission to cross park lands; provided that the grant of any such permission shall be in the sole discretion of the Council.

(e) When the Company is required by City to remove or relocate its mains, laterals,

and other facilities to accommodate construction of streets and alleys by City, and Company is eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation, and such reimbursement is required to be handled through the City, Company shall provide costs and expenses to the City to be included in any application by City for reimbursement. Company will work with the City to provide appropriate cost and expense documentation to the City prior to the filing of the application. When Company is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by City without reimbursement from City, Company shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112 et al, of the Texas Utilities Code or any other applicable law or regulations. Relocation of any Company mains, pipes or facilities for private purposes will be subject to reimbursement.

**SECTION 4. Location of Pipes and Facilities; Fleet and Customer Information.**

Company shall cooperate and provide at no cost to the City copies of maps, plans and other information depicting and detailing the location of Company's facilities, pipes, transmission lines and related appurtenances within city limits of the City, including full details related to anything located in public rights-of-way or within City utility easements. Company shall provide City with information related to their vehicle fleet and equipment that will or may be operated within the City, specifically detailing weight capacity and/or hazardous transport designations.

**SECTION 5. Emergency Plan, Coordination.** Company shall cooperate and coordinate the formation of an emergency plan with the City's fire department and emergency responders in the event of a gas line break, leak or other such failure of the Company's system and related infrastructure. Company shall inform City personnel of actions that will be taken by Company under varying emergency situations, including the detection and smell of gas. Company shall provide details of tank locations and related infrastructure of Company, the locations of emergency shut off valves and other information deemed pertinent by the City's emergency responders.

**SECTION 6. Reservations of Rights.** All work, activity and undertakings by the Company shall be subject to the terms and provisions of this Franchise and the continuing exercise by the City of its governmental and police powers; and provided further that nothing herein shall be construed to require or authorize Company to exceed any rights granted herein or by the Texas Railroad Commission. No fee or other charges of any kind shall be imposed upon the Company, or upon any consumer of gas for the breaking or opening of any streets or other public rights-of-way or for the laying, construction, or maintenance of ~~mainline~~ **mainlines**, service pipes or other facilities therein except as provided for hereunder. Nothing in this Franchise Ordinance shall be construed in such manner as to in any way abridge the right of the City to pass the necessary police ordinances for the protection of the

citizens of the City and their property, and the property of the Company, as long as such ordinances are not inconsistent with this Franchise Ordinance.

**SECTION 7. Damage to Facilities.** Subject to an exception for emergencies, the Company shall do no permanent injury to any street, avenue, alley, lane, bridge, stream, watercourse, park or public place. Any such injury by the Company to any street, avenue, alley, lane, bridge, stream, watercourse, park or public place shall be repaired at the cost and expense of the Company. Company and City shall exercise reasonable efforts to ensure that any future installations of utilities in City rights-of-way by Company, City or other utility providers authorized by City do not interfere unnecessarily with any facilities of Company, City or other utility providers. In the event of a conflict between the location of the facilities of Company and the location of the facilities of City or other utility franchises within the Public Right-of-Way that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities.

**SECTION 8. Rules and Rates.** Company, and its successors and assigns, shall have the right to adopt and enforce Rules of Service for service hereunder not inconsistent with law or this Franchise Ordinance. Company shall supply propane gas and provide regulated services at the rates and under the terms and conditions specified by such rules, its tariffs filed with the City and as provided herein. Upon demand, Company shall provide to the City a list of all applicable rules, regulations, including state and federal statutes, applicable to Company's business operations conducted within the City.

**SECTION 9. Franchise Term.** This Franchise Ordinance shall continue and remain in full force and effect for a period of twenty (20) years from and after the date it becomes effective.

**SECTION 10. Option to Purchase.** (a) In the event Company shall desire renewal of this Franchise Ordinance, the Company shall notify the City within the last twelve (12) months of the term of this Franchise Ordinance. If the City refuses to renew this Franchise Ordinance with the Company, the City, at the City's option, shall have the right to purchase for cash the distribution plant assets of the Company located within the City, and those located within the extraterritorial jurisdiction of the City that are operated as one business unit with the assets located within the City, for the market value of such assets, appraised as an ongoing business without regard to the lack of a franchise ordinance (the "Appraised Value").

(b) In order to exercise this option to purchase, the City must provide written notice the Company of the City's intention to purchase (the "Notice"), or such option is waived. If given, the Notice by City to the Company shall be provided on the later of the following times: (i) six (6) months prior to the expiration of the Franchise Ordinance; (ii) six (6) months after the receipt from the Company of the Company's notice that it desires to renew

this Franchise; or (iii) six (6) months after receiving written notice from the Company that the Franchise Ordinance has expired. The determination of the Appraised Value shall be accomplished as set forth below. The Company and the City shall meet within thirty (30) days of the Notice and attempt to reach agreement upon the Appraised Value. In the event the Company and the City cannot reach agreement upon the Appraised Value within such thirty (30) day period, Company and the City shall each appoint a qualified business appraiser, with a reasonable level of experience in business valuations of utility assets. The appraisers so appointed shall each render an opinion as to the Appraised Value within ninety (90) days of the Notice. If the two opinions differ by 10%, or less, of the higher value, the average of the values shall be the Appraised Value. If the two opinions differ by more than 10% of the higher value, the appointed appraisers shall select a mutually agreeable independent business appraiser (with reasonable business valuation experience), who shall provide an opinion as to the Appraised Value to both parties within one hundred fifty (150) days of the Notice. The value assigned by the independent appraiser and the closest value assigned by either of the ~~appointed~~appointed appraisers shall be averaged to produce the Appraised Value.

(c) Both parties shall use good faith efforts to reach agreement on the terms and conditions of the purchase and to close the purchase transaction prior to the expiration of the term of the franchise ordinance. Each party shall bear its own costs and expenses associated with the purchase transaction and shall share equally all costs of the independent business appraiser.

(d) In the event the City exercises the option to purchase Company's system, such purchase must be closed within six (6) months following the final determination of the Appraised Value pursuant to Subsection 7(b) above. In such event, the franchise term shall be deemed extended for such time as required to finalize the purchase of the distribution assets of Company, but no longer than six (6) months in any event. In the event the City decides not to purchase Company's system, or the City is financially unable to close the purchase of the Company's system within the six (6) months, the City's purchase right shall be deemed waived, and the City shall reimburse Company for all of the Company's reasonably necessary costs and expenses expended in preparing for the purchase transaction.

(e) In the event the City does not exercise the option to purchase and this Franchise Ordinance is not renewed or extended, at the expiration of the franchise term the Company may, at its sole option either: (1) abandon its facilities in place in accordance with the Regulations with the Railroad Commission of Texas, in which case the City shall support Company's abandonment filing at the Railroad Commission; or (2) remove such facilities and restore the streets, alleys, parks and public places of the City to a reasonably as good condition as before such removal; or (3) any combination of the foregoing, all at ~~Company's~~sCompany's cost and expense. Nothing in this section shall prohibit the City and Company from mutually agreeing to extend the term of this Franchise Ordinance so as to allow for good faith negotiations on a new Franchise Ordinance.

**SECTION 11. Transfer and Assignment.** Company shall not transfer this Franchise nor any rights and privileges granted herein without the written approval of the Council expressed by Ordinance, provided however, that the Company may transfer this Franchise to another wholly owned affiliate of the Company upon thirty days' prior written notice, if (i) such new affiliate accepts the Franchise under its then current terms and conditions and assumes liability for all acts and omissions of its predecessors and (ii) Company provides a guarantee of such new affiliate's performance in a form acceptable to the City. Such approval shall not be unreasonably delayed or withheld. The Company may assign this Franchise only for the purpose of securing corporate financing for the Company.

**SECTION 12. City and Company.** Whenever the words "the Company" occur in this Franchise Ordinance, it shall mean and shall be understood to be Texas Community Propane, Ltd., and its successors, lessees, assigns, individual, co-partnership, corporation, receiver, or other person or authority owning or operating such franchise or plant under authority of an ordinance of the City approving such transfer or assignment; and whenever the words "authority", "proper authority", or "City" occur in this Franchise Ordinance they mean and shall be understood to be the authorized officer or officers, committee, city council, commission or other body representing the City of Manor, Texas.

**SECTION 13. Franchise Fees.** (a) As full consideration for the rights and privileges conferred by this Franchise Ordinance, and as a charge for the use of the streets, alleys and public ways, Company shall collect from its customers and pay to the City a sum of money, known as the "Franchise Fee", equal to the sum of the following: (1) four percent (4%) of Company's actual Gross Receipts from Gas Sales ~~(as defined in Section 13(b))~~ to Company's gas sales customers located in the City; plus (2) four percent (4%) of Company's actual Gross Receipts from Gas Transportation ~~(as defined in Section 13(b))~~ to Company's gas transportation customers with re-delivery points located in the City; plus (3) four percent (4%) of Company's actual Gross Receipts from Utility Regulated Service Charges ~~(as defined in Section 13(b))~~.

(b) Subject to the other provisions herein, Gross Receipts from Gas Sales shall be and include: (1) the Company's total receipts from its gas sales to its customers located within the corporate limits of the City consisting of the following receipts: (i) cost of service and (ii) purchased gas and applicable revenue tax adjustments; (2) Gross Receipts from Gas Transportation which shall be defined as the Company's total receipts from its transportation of third party gas for re-delivery to customers with re-delivery points located within the corporate limits of the City, consisting of receipts from cost of service; provided that Company's Gross Receipts from Gas Sales and Gross Receipts from Gas Transportation subject to the Franchise Fee shall specifically exclude, without limitation: (1) receipts from non-regulated miscellaneous service charges (e.g. charges for appliance light-ups, returned checks, etc.); (2) receipts from gas sales or gas transportation services to customers located at

delivery points outside the corporate limits of the City; (3) receipts from gas consumed or transported by Company for its own use; (4) bad debt or uncollected accounts; (5) receipts collected for gas utility taxes; (6) receipts for any taxes, assessments, charges or fees of any kind charged by a governmental entity, other than Franchise Fees and gross receipts taxes; (7) receipts for construction advances or contributions in aid of construction; (8) receipts for maintenance of appliances, machinery or equipment; (9) receipts for compensation for damage to Company's property; (10) receipts from sales of materials, appliances or equipment; and (11) receipts from any non-regulated utility or non-regulated services or products. Utility Regulated Service Charges are charges for services (but not for propane gas sales or transportation services) that (a) Company provides to its customers located within the corporate limits of the City and (b) which are or may, from time to time, become subject to the rate regulation of the applicable regulatory authority. Such Utility Regulated Service Charges shall include receipts of Company from its customers in the City for connections, dis-connections and meter tests. Such Utility Regulated Service Charges shall not include receipts of Company from its customers in the City for appliance sales, appliance light-ups, maintenance of customer equipment or facilities and any other receipts that are not legally subject to the rate regulation of the applicable regulatory authority.

(c) Company shall collect from its customers and pay the City under the terms of this Franchise Ordinance, the franchise fee and gross receipts above provided based upon meters read on or after the effective date of this Franchise Ordinance. During the term of this Franchise Ordinance, Company shall collect from its customers and pay the City in May and November for the preceding six months, not including April and May and October and November. Company shall include with the Franchise Fee payment a statement showing its gross Receipts from Gas Sales, Gas Transportation in the City and Utility Regulated Service Charges in the City, including the calculation of the Franchise Fee for the subject time period. Collection and payment of Franchise Fees shall be *final* as to both parties unless questioned by written notice provided to the other party within (3) years after payment thereof has been made.

(d) It is expressly agreed that the Franchise Fee payments shall be in lieu of any payments for the right to use the public rights-of-way of the City, including expressly the charge permitted to be levied by Texas Tax Code §§ 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. The Franchise Fee shall be in lieu of and accepted as payment of all of Company's obligations to pay all other franchise, license, easement or occupation taxes, levies, exactions, fees, rentals, franchise fees, easement taxes, or charges of any kind whatsoever which may be levied or attempted to be levied in general by the City for the use of City's rights-of-way, with the sole exception of sales taxes, and ad valorem taxes. ~~It is specifically provided however that~~ However, this subsection shall not release, waive, or apply to the imposition of any fine, penalty, or charge arising and imposed as a result of the violation of a rule, regulation, or ordinance. This section shall not be construed to waive any building or construction permit fees or ~~inspection~~ inspection fees.



(e) It is expressly agreed by the City that the Franchise Fees defined in this Franchise Ordinance are a reasonable and necessary operating expense of Company and shall be fully recovered by Company by collection from its customers in the City, whether asserted retroactively or prospectively, by revising its rate schedules, assessing an additional charge to the monthly bills of its customers within the City, adding an additional charge to the Company's purchased gas adjustment clause for the City or in any legal manner determined in Company's discretion.

(f) The City may, upon reasonable prior written notice and during reasonable business hours, inspect and review the books and records of Company to verify the amount of Franchise Fees due. It is understood and agreed that such representative may be an independent agent, assigned by the City Council to conduct the inspection of Company's books and records for the reconciliation of Franchise Fee payments to determine the accuracy thereof

(g) The rights, privileges, and franchises granted by this Franchise Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time as it may see fit, like privileges, rights, and franchises to any other person or corporation for the purpose of furnishing gas in the City. In the event any entity providing propane gas service to customers within the City (other than Company) is not legally required to pay the same or an equivalent Franchise Fee as required to be collected and paid by Company in this Franchise Ordinance, then with respect to propane gas sales or transportation service to those specific customers, Company's Franchise Fee obligation resulting from sales or transportation service to those specific customers may be automatically reduced by Company to a level equivalent to the amount the City legally requires to be paid by such other entity.

(h) The City shall be paid a franchise fee once with respect to the same gas sold and/or transported within the City. Should the City receive or be entitled to receive from any other company, firm, corporation or person a franchise fee or similar street rental fee payment from the transportation and/or sale of the same or equivalent gas, the aggregate amount which the City has received or is entitled to receive with respect to the same or equivalent gas transported and/or sold by Company shall be deducted from, and reported with, the Franchise Fee payment to be made to the City by Company hereunder. Among other things, this section is intended to apply to gas purchased by Company for resale to its customers within the City and to Transport Gas redelivered by Company within the City. Among other things, this section is intended to apply to gas purchased by Company for resale to its customers within the City and to Transport Gas redelivered by Company within the City. Upon request of Company, the City agrees to provide Company, within a reasonable time of its receipt, with written notice setting forth the amounts of any such franchise fee or other fee received for the use of its streets for the transportation or sale of gas in the City that is ultimately

transported or delivered through Company's system in the City.

(i) It is recognized by the City that the intent of sections 13(g) and 13(h) is to ~~insure~~ensure that, with respect to Franchise Fees, Company is on a level playing field with its competitors so as to avoid unjust discrimination against Company.

**SECTION 14. Annexation.** The City shall notify Company in writing of the annexation of any new territory into the City limits by providing maps that highlight the newly annexed territories. Upon receipt of notice of annexation from the City, Company shall have ninety (90) days to begin collecting and paying the Franchise Fee for any revenues received from Company's customers residing in the newly annexed territories. In the event Company has constructed mainlines, service pipes, or other facilities on the annexed property prior to annexation, the Company agrees to file as-built plans with the City identifying all mains and storage facilities.

**SECTION 15. Dispute Resolution.** If any dispute arises between the City and the Company, or any of its affiliates (collectively the "Parties<sup>2,3</sup>" or individually a "Party"), relating to this Franchise Ordinance, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

(a) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority (or telephone access to such individuals) regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

(b) If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of this dispute, they will jointly appoint a mutually acceptable arbitrator qualified by education and training to rule upon the matter in controversy and not affiliated with either of the Parties (the "Arbitrator"). In the event the Parties have been unable to agree upon such appointment within fifty (50) days from the initial meeting, the Parties will seek the assistance of the American Arbitration Association or other mutually agreeable dispute resolution organization to appoint the Arbitrator, who shall have a reasonable level of experience with similar issues. The fees of the Arbitrator shall be shared equally by the Parties. Each Party in such proceedings shall bear the costs and expenses of its counsel, witnesses, and employees. All other costs and expenses of the arbitration proceeding shall be borne equally by both Parties.

(c) The Arbitrator shall promptly hear and determine the controversy, dispute, or question in accordance with the provisions of the Texas General Arbitration Act or other mutually agreeable arbitration act. The Arbitrator shall render a final award within ninety (90) days following the date upon which the Arbitrator is appointed. The Parties agree that the Arbitrator may award all available contractual remedies to the Parties, including injunctive relief, if necessary.

(d) All arbitration proceedings hereunder shall be subject to the Texas General Arbitration Act, and any amendments thereto (unless otherwise mutually agreed to in writing

by the Parties), where such act is not in conflict with the provisions hereto; provided that notwithstanding any other term, provision or condition hereof, or the Act, as amended.

**SECTION 16. Indemnity.** In consideration of the granting of this Franchise, Company agrees that City shall not be liable or responsible for, and Company does hereby release, agree to indemnify, defend, and hold harmless the City, its agents, officers and employees, from and against any and all suits, actions, or claims of injury to any person, or damages to or loss of any property brought or made for or on account of any death, injuries to, or damages received or sustained by or on behalf of any person or persons, firm, corporation, or other entity, arising out of or occasioned by the Company's construction, operation, maintenance, or management of its transmission or distribution system, or arising from any act of negligence of the Company, or any of its agents, contractors, servants, employees, or licenses, including a breach of the Company's obligation under this Franchise Ordinance to provide the City information contained in written reports that is free of material misrepresentation, and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or intentional acts or omissions of the City, its officers and employees. In the event that any action, suit, or proceeding is brought against City upon any liability arising out of the construction, operations, or maintenance of the Company's facilities, City shall give notice in writing to Company by Registered or Certified Mail. Upon receipt of such notice, the Company, at its own expense, shall defend such action and take all such steps as may be necessary or proper to prevent the obtaining of a judgment against the City and/or to satisfy said judgment. City agrees to cooperate with Company in connection with such defense. In the event a claim allegedly arises from the concurrent fault of both the City and the Company, the Company must indemnify the City to the full proportionate extent to which the Company is found to be responsible. The City shall promptly notify the Company by registered or certified mail of any claim or cause of action which may be asserted against the City relating to or covering any matter against which the Company has agreed, as set forth above, to indemnify, defend and save harmless the City. The Company reserves the right, but not the obligation, to employ such attorneys, expert witnesses, and consultants as it deems necessary to defend against the claim or cause of action. The Company shall have the right to investigate, defend and compromise all claims referred to herein after conferring with the City's legal department. It is understood that it is not the intention of either the City or the Company to create liability, right or claim for the benefit of third parties and this Franchise Ordinance is intended and shall be construed for the sole benefit of the City and the Company.

**SECTION 17. Anti-Boycott Verification.** To the extent this Franchise Ordinance constitutes a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270 of the Texas Government Code, and subject to applicable Federal law, Company represents that neither Company nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Company (i) boycotts Israel or (ii) will boycott Israel through the term

of this Franchise Ordinance. The terms “boycotts Israel” and “boycott Israel” as used in this paragraph have the meanings assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code, as amended.

**SECTION 18. Iran, Sudan and Foreign Terrorist Organizations.** To the extent this Franchise Ordinance constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, Company represents that Company nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201, or 2252.153 of the Texas Government Code.

**SECTION 19. Anti-Boycott Verification – Energy Companies.** The Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Franchise Ordinance. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, and to the extent such Section is not inconsistent with a governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. As used in the foregoing verification, “boycott energy company” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by the preceding statement in (A).

**SECTION 20. Anti-Discrimination Verification – Firearm Entities and Firearm Trade Associations.** The Company hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association during the term of this Franchise Ordinance. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” means: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity

or firearm trade association; but does not include (a) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; or (b) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

**SECTION 21. Savings Clause.** The City Council of the City of Manor, Texas hereby declares that if any section, subsection, paragraph, sentence, clause, phrase, work or portion of this ordinance is declared invalid, or unconstitutional, by a court of competent jurisdiction, that, in such event that it would have passed and ordained any and all remaining portions of this ordinance without the inclusion of that portion or portions which may be so found to be unconstitutional or invalid, and declares that its intent is to make no portion of this ordinance dependent upon the validity of any portion thereof, and that all said remaining portions shall continue in full force and effect.

**SECTION 22. Severability.** If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 23. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance was considered was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

**SECTION 24. Effective Date.** This Franchise Ordinance shall take effect and be in full force from and after its final passage and approval by the City Council in accordance with the general laws of the State of Texas and the acceptance hereof in writing by Company as herein provided.

**SECTION 25. Acceptance.** The Company shall, within sixty (60) days from the approval of this Franchise Ordinance signed by the Mayor, file in the office of the City Secretary its consent to and written acceptance of provisions and conditions of this Franchise Ordinance.

**PASSED AND APPROVED** on First Reading this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**FINALLY PASSED AND APPROVED** on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ATTEST:**

**CITY OF MANOR, TEXAS**

\_\_\_\_\_  
Lluvia T. Almaraz, City Secretary

\_\_\_\_\_  
Dr. Christopher Harvey, Mayor

The above and foregoing Franchise Ordinance of the City of Manor, Travis County, Texas, Ordinance No. \_\_\_\_\_, and the grants, franchise, powers, rights, and privileges thereto were accepted by Texas Community Propane, Ltd., on and as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**TEXAS COMMUNITY PROPANE, LTD.**

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_