

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF COLUMBIA GAS OF KENTUCKY, INC.)
FOR ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND)
NECESSITY TO BID ON A GAS) Case No. 2020-00169
DISTRIBUTION FRANCHISE IN THE)
CORPORATION LIMITS OF THE CITY OF)
WINCHESTER, KENTUCKY.)

APPLICATION OF COLUMBIA GAS OF KENTUCKY, INC.

The petition of Columbia Gas of Kentucky, Inc. ("Columbia") respectfully states:

(A) That applicant is engaged in the business of furnishing natural gas services to the public in certain counties in the Commonwealth of Kentucky, pursuant to authority granted by the Commission.

(B) That applicant's full name and post office address is:

Columbia Gas of Kentucky, Inc.
2001 Mercer Road
P.O. Box 14241
Lexington, KY 40512-4241

(C) That Columbia's Articles of Incorporation previously have been filed with the Commission in Case No. 2016-00162 and are incorporated herein by reference.

(D) That Columbia is furnishing gas distribution service in the franchise area as of the date of the filing of this Application.

(E) Attached hereto is Ordinance 5-2020 passed on May 5, 2020 by the City of Winchester, Kentucky ("Winchester"). Said Ordinance reflects the decision of Winchester to advertise for bids for a natural gas franchise. Said advertisement was by legal notice published in *The Winchester Sun* on May 19, 2020.

(F) The need and demand for gas distribution service within the corporation limits of Winchester is shown by the fact that Columbia serves approximately 4,393 customers in the City at the present time. There exists a public necessity for adequate service of natural gas to the citizens of Winchester, Kentucky.

(G) Columbia desires to acquire said franchise for gas distribution service in Winchester and submit a bid pursuant to Winchester's published legal notice. The deadline for receipt of bids is June 5, 2020 at 2:00 p.m.

WHEREFORE, Columbia respectfully requests that the Public Service Commission make its order issuing a Certificate of Public Convenience and Necessity that authorizes Columbia to acquire a gas distribution franchise from Winchester, for the reasons described herein.

Dated at Columbus, Ohio, this 1st day of June 2020.

Respectfully submitted,

COLUMBIA GAS OF KENTUCKY, INC.

By: /s/ Brooke E. Wancheck
Brooke E. Wancheck
Assistant General Counsel

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Attorney for
COLUMBIA GAS OF KENTUCKY, INC.

ATTACHMENT

**Ordinance 5-2020
May 5, 2020**

CITY OF WINCHESTER, KENTUCKY
ORDINANCE NO. 5-2020

SUMMARY

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE NATURAL GAS FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION, AND SALE OF NATURAL GAS FOR HEATING AND OTHER PURPOSES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF WINCHESTER FOR AN INITIAL TEN (10) YEAR PERIOD WITH UP TO TWO (2) ADDITIONAL EXTENSIONS OF TIME OF FIVE (5) YEARS EACH, IMPOSING A FRANCHISING FEE OF THREE PERCENT (3%) OF EACH FRANCHISEE'S GROSS ANNUAL REVENUES FROM THE SALE, DISTRIBUTION, AND DELIVERY OF GAS WITHIN THE CITY OF WINCHESTER; AND RESERVING THE RIGHT TO IMPOSE A FRANCHISE FEE NOT TO EXCEED FIVE PERCENT (5%) OF EACH FRANCHISEE'S GROSS ANNUAL REVENUES FROM THE SALE, DISTRIBUTION, AND DELIVERY OF NATURAL GAS WITHIN THE CITY OF WINCHESTER; ALL EFFECTIVE ON DATE OF PASSAGE

The proposed ordinance can be viewed in full text at the office of the City Clerk, located at City Hall, 32 Wall Street, Winchester, Kentucky.

I hereby certify that the foregoing is a true and accurate summary of the contents of the above-entitled ordinance.

Reviewed by:



William A. Dykeman
City Attorney

CITY OF WINCHESTER, KENTUCKY

ORDINANCE NO. 5-2020

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE GAS FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS FOR HEATING AND OTHER PURPOSES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF WINCHESTER FOR AN INITIAL TEN (10) YEAR PERIOD WITH UP TO TWO (2) ADDITIONAL EXTENSIONS OF TIME OF FIVE (5) YEARS EACH, IMPOSING A FRANCHISING FEE OF THREE PERCENT (3%) OF EACH FRANCHISEE'S GROSS ANNUAL REVENUES FROM THE SALE, DISTRIBUTION, AND DELIVERY OF GAS WITHIN THE CITY OF WINCHESTER; AND RESERVING THE RIGHT TO IMPOSE A FRANCHISE FEE NOT TO EXCEED FIVE PERCENT (5%) OF EACH FRANCHISEE'S GROSS ANNUAL REVENUES FROM THE SALE, DISTRIBUTION, AND DELIVERY OF GAS WITHIN THE CITY OF WINCHESTER; ALL EFFECTIVE ON DATE OF PASSAGE.

BE IT ORDAINED BY THE CITY OF WINCHESTER:

Section 1 - There is hereby created a non-exclusive franchise to acquire, lay, maintain and operate in the public streets, alleys, avenues, public roads, highways, sidewalks and other public ways of the City of Winchester (hereinafter the "Rights-of-way"), a system of mains, pipes, fixtures and appliances for the transmission, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Ordinance and any franchise agreement entered into pursuant to the terms of this Ordinance. This Ordinance does not excuse the franchisee from complying with any and all existing and future local laws and ordinances, as may be amended, except to the extent such local laws and ordinances are in conflict or inconsistent with the terms of this Ordinance and any franchise agreement entered into pursuant to the terms of this Ordinance.

Section 2 - The person, firm or corporation that shall become the purchaser of said franchise, or any successor or assignee of such person, shall hereinafter be referred to as the "Company" or "Franchisee". The City of Winchester shall hereinafter be referred to as "Winchester", or the "Government".

Section 3 - The Company acquiring this franchise shall have the right and privilege of laying, maintaining and operating gas mains and pipes, equipment and apparatus, and

appurtenances necessary or appropriate in connection therewith, in, along and under the Rights-of-way within the corporate boundaries of Winchester as they now exist or may hereafter be extended (referred to herein as "System" or "Facilities"); subject to the provisions hereof and to all powers (including corporate and police powers) inherent in, conferred upon, or reserved to Winchester.

Section 4 – In the operation of its System as it relates to the rights conferred by this franchise, the Company shall conform to at least the minimum standards or requirements contained in federal or state law or regulation related to transportation of gas and liquids by pipeline. In addition to complying with all of the requirements contained in federal or state law or regulation, the Company agrees that:

(a) Work by the Company hereunder shall be done in a workmanlike manner.

In case of any material defect in the work, materials or equipment, whether latent or patent, the Company will forthwith remedy such defects without cost to Winchester; and

(b) In the construction or reconstruction or maintenance or removal of any of said Facilities, the Company shall have due regard for the rights of Winchester and others, and shall not unreasonably interfere with, or in any way permanently damage, the property of Winchester or others lawfully under, on, or above the Right-of-way. The Company shall comply with all the laws of the Commonwealth of Kentucky and the City of Winchester as to placing lights, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such laws. The Company shall not unnecessarily interfere with public use of the Rights-of-way.

Section 5 – (a) No pavement, sidewalks, curbs, gutters or other street installations shall be disturbed and no excavations in any of the said streets shall be made, without the written permission of the Winchester City Manager or his or her lawful designee, unless in the case of a circumstance requiring the restoration of service or presenting an immediate risk of injury or damage to any person or property ("Emergency"), provided such person is notified within five (5) days of such work with the time, date, location and extent of the work performed. Where

approval of the Winchester City Manager is required hereunder, and the Company has delivered a written request for said permission, the Winchester City Manager, or his designee, shall render a written decision regarding said permission within ten (10) working days to the originating requestor at the Company so the Company may make any changes, repairs, maintenance, installations, relocations, replacements or improvements of its own Facilities beneath the proposed paving prior to such paving. In the event the Company refrains from performing such work, it shall thereafter be precluded from doing so, except for an Emergency or other unforeseeable circumstance, for a period of one (1) year following the paving. Within the one (1) year period, any work may be made in the unpaved area of the street and shall not disturb the new pavement unless written permission is granted from the Winchester City Manager or his designee as described in Section 5(a) herein.

Section 6 – As consideration for the granting of this franchise, the Company agrees to defend, indemnify, and hold harmless Winchester from liability on account of injuries or damages to persons or property arising out of the Company's construction, maintenance, repair or operation of its System, and in the event of a lawsuit brought against Winchester, the Company shall defend Winchester at the cost of the Company. The obligation to defend, indemnify and hold harmless does not include defending, indemnifying, and holding harmless Winchester for its own negligent acts or intentional acts or the negligence or acts of its employees, contractors or agents and Winchester shall be exclusively liable for that portion of any claim, demand or judgment in proportion to its own degree of fault or that of its employees, contractors or agents. Winchester shall notify the Company in writing of any known or potential claim that might be asserted against it within ten (10) days of becoming aware of such claim and shall immediately upon receipt provide any documents pertaining to same to the Company. The Company shall have the authority in its sole discretion to choose and direct the counsel who will defend against any claim(s) for which its duty to indemnify or hold harmless is asserted and Winchester may not consent to any settlement of a claim for which a duty to indemnify or hold harmless is asserted without first obtaining the consent of the Company.

Section 7 - The Company agrees to procure and maintain throughout the term of any franchise agreement awarded pursuant to this Ordinance and any extension thereof, commercial general liability insurance in the principal amount of at least One Million dollars (\$1,000,000) per occurrence with a Two Million Dollar (\$2,000,000.00) aggregate, with an insurance company authorized to do business in the Commonwealth of Kentucky with the provision, "it is agreed and understood that the City of Winchester, its agents, employees, officers and elected officials, as their interests may appear, are additional insureds, in the same manner as if a separate policy had been issued, under the provision of the policies required to be issued during the term of this franchise or as otherwise required by this Ordinance." Limits of liability required may be satisfied through a combination of primary and excess coverage amounts. In the event that any policy of insurance provides coverage on a "claims-made" basis, the retroactive date for any such policy, if any, shall not be later than the effective date of this Ordinance. All insurance policies shall be broad form in nature and shall be through a company with an A.M. Best Rating of "A" or better, admitted to do business in Kentucky, and the contract shall be non-cancelable without at least thirty (30) days advance written notice by registered mail to Winchester from the insurance company. In its sole discretion, the Company may choose to self-insure its obligations hereunder.

Section 8 – (a) Duly authorized representatives of Winchester may, at all reasonable times and under reasonable conditions with prior notice: (1) have access to all or any of the property owned or used in part or in whole by the Company in its operating and maintaining the System under this franchise and located within the Rights-of-way; and (2) inspect, examine or verify all or any of the accounts, books, records, contracts, documents or papers of the Company relating to gross revenues in the City of Winchester in order to audit and recompute any amounts determined to be payable under this Ordinance consistent with the provisions of Section 17(b) of this Ordinance. In the event that Winchester determines that it desires an audit of this franchise, the Company agrees to comply with all reasonable requests of Winchester pertaining to obtaining any necessary information or documentation from the Company reasonably necessary to the

administration of this franchise, subject to any reasonable confidentiality agreement. In any inspection of the Company's facilities, representatives of the City shall be escorted by Company personnel, shall wear all required personnel protection equipment and shall observe all safety requirements applicable to such Facilities. Winchester's representatives shall also acknowledge, in writing, that the Company's Facilities often qualify as critical energy infrastructure and that said representatives will safeguard all information pertaining to the location, operation, configuration or nature of such Facilities. At no time may any agent, employee or officer of Winchester interfere with, alter, manipulate or change any portion of the Company's system or controls.

(b) The Company agrees further to furnish the Mayor or his designee timely written notice of its filing an application with the Public Service Commission for an increase in general rates or change in its billing practices concurrent with said filing.

(c) The Company agrees to provide Winchester with information pertaining to its provision of services pursuant to this franchise upon reasonable request. This shall include, but is not necessarily limited to, attending official public meeting(s) at which some or all the Winchester Commission Members are in attendance in order to provide such information upon reasonable advanced notice and providing an annual update to the Commission upon its request.

Section 9 - (a) The franchise hereby created shall be for an initial period of ten (10) years from the date of acceptance by Winchester.

(b) This franchise may be renewed for up to two (2) additional terms not to exceed five (5) years each upon the request of the Company and the approval of the request by Winchester. The request shall be made in writing to Winchester at least one hundred eighty (180) days, but no earlier than one (1) year, in advance of the termination date of the Company's franchise agreement. The ultimate decision of whether to grant an additional franchise term shall solely be that of the Government.

(c) This franchise is not exclusive, and the Government reserves the right to grant similar franchises to more than one Company. All franchises awarded pursuant to this

Ordinance are intended to terminate at the same time. Therefore, any other Company awarded a franchise pursuant to this Ordinance shall only be awarded a franchise that is equal in duration to the remaining term of the initial franchise(s). In the event that Winchester enters into a franchise with another natural gas utility, a copy of each such franchise agreement shall be provided to the Company and the Company shall have sixty (60) days following receipt of such franchise agreement to elect, in its sole discretion, any term or condition in said franchise agreement that is different or inconsistent from the franchise agreement established pursuant to this Ordinance as an amendment to the existing franchise agreement. Winchester shall not withhold its consent to such an amendment.

(d) This franchise creates no vested rights in the Company and any installation or emplacement of Facilities by the Company in the Rights-of-way is at the Company's risk. Winchester agrees that it will not seek to condemn, acquire or take the assets of the Company within the boundaries of the City for a period of one (1) year following the expiration or termination of any franchise arising out of this Ordinance. Winchester further agrees that any future condemnation, acquisition or taking of the assets of the Company within the boundaries of the City shall be at a price equal to or higher than the replacement value of said assets plus the cost of all goodwill and going concern value of the Company's assets located within the boundaries of Winchester.

(e) No assignment of this franchise or the System subject to this franchise shall take place without at least sixty (60) days advance written notice to Winchester, and consent by Winchester, which consent shall not be unreasonably withheld.

Section 10 - (a) If, after the Company is presented with a claim from Winchester that a violation of any franchise agreement arising from the Ordinance has occurred and has further been provided the opportunity to appear, present evidence and examine the witnesses supporting the claim of a violation in a formal hearing presided over by the Winchester Mayor or his designee, Winchester determines that the Company has violated any of the following

provisions of this Ordinance, the following penalties shall be recoverable. The above-determination, which must be in writing and provide the basis for the decision, shall be the final administrative decision, which may be appealed to a court of competent jurisdiction.

(1) For failure to provide data and reports requested by Winchester and as required by this Ordinance the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(2) For failure to pay the franchise fee when due pursuant to Section 17 of this Ordinance, or any itemized bill presented by Winchester pursuant to Section 5 of this Ordinance or this section, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof for each day that the violation continues. However, this provision shall not apply if interest is assessed by Winchester pursuant to Section 17(c).

(3) For failure to comply with the provisions of Section 5 of this Ordinance, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof for each day that the violation continues.

(b) If the Company fails to comply within thirty (30) days of any Winchester City Commission resolution directing compliance with any other provisions of this Ordinance, the Company shall forfeit one hundred dollars (\$100.00) per day or part thereof for each day that the violation continues beginning on the thirty-first (31st) day. The decision of the Commission may be appealed to a court of competent jurisdiction and the forfeiture shall not be due to the City until such time as a final judgment is rendered.

(c) The Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of Winchester, upon any one or more occasions, to insist upon the Company's performance or to seek the Company's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of Winchester to seek and collect penalties as set forth in this

section is in addition to its right to terminate and cancel as set forth in Section 12 of this Ordinance.

Section 11 - The Company shall provide service to customers in Winchester that is of like kind and quality as that provided to customers outside the City, consistent with KRS 278.030.

Section 12 - (a) In addition to all other rights and powers, each party to a franchise agreement arising out of this Ordinance reserves the right to terminate and cancel any franchise awarded pursuant to this Ordinance and all rights and privileges of either party thereto in the event that either party:

(1) Willfully violates any material provision of the franchise agreement or legal authority relating to the subject matter of the franchise agreement, except where such violation is without fault or through excusable neglect, including but not limited to cases of force majeure;

(2) Willfully attempts to evade any material provision of the franchise or practices any fraud or deceit upon the other party;

(3) Knowingly makes a material misrepresentation of any fact in the letting, application, adoption, execution, proposal for renewal, or negotiation of the franchise; or

(4) Fails to begin service restoration following seventy-two (72) consecutive hours of interrupted service, except when approval of such interruption is obtained from Winchester. Such approval shall not be unreasonably withheld. In cases of force majeure or acts beyond the Company's control approval shall be granted. The Company shall provide, at a minimum, daily restoration status reports.

(b) Prior to attempting to terminate or cancel this franchise pursuant to this section, the party entitled to give notice of termination shall make a written demand that the defaulting party take appropriate corrective action to cure the default. If the alleged violation of Section 12(a), continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously

pursued: (1) Winchester may place its request for termination of the franchise as early as the next regular City Commission meeting agenda; or (2) the Company may deliver written notice of termination to Winchester.

(c) In the event of a termination by Winchester, it shall cause to be served upon Company, at least ten (10) days prior to the date of such City Commission meeting, a written notice of intent to request such termination and the time and place of the meeting, legal notice of which shall be published in accordance with any applicable laws.

(1) The Winchester City Commission shall consider the request of the Company and shall hear any person interested therein, and shall determine in its reasonable discretion, whether or not any alleged violation by the Company occurred or was with just cause.

(2) If such violation by the Company is found to have been with just cause, the City Commission shall direct the Company to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable.

(3) If the City Commission determines such violation by the Company was without just cause, then the City Commission may, by resolution or ordinance, declare that the franchise of the Company shall be terminated and forfeited unless there is compliance by the Company within such period as the City Commission may fix.

Section 13 - The Company shall provide Winchester at least sixty (60) days advance written notice of the foreclosure or other judicial sale of all or a substantial part of the Company's Facilities, or upon the termination of any lease covering all or a substantial part of its Facilities, and such notification shall be treated as a notification that an assignment of the franchise has taken place, and the provisions of Section 9 of this Ordinance, governing the consent of Winchester to such assignment, shall apply.

Section 14 – (a) Winchester shall have the right to cancel this franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding,

unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

(1) Within thirty (30) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder or have reasonably commenced such corrective actions; and,

(2) Such receiver or trustee, within said sixty (60) days shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise granted to the Company.

(b) The Company shall have the right to cancel this franchise upon any act of bankruptcy, receivership, reorganization, application for the appointment of a receiver, or any other initiation of insolvency proceedings on behalf of, or against, Winchester. Notwithstanding the foregoing, and subject to an order of an appointed trustee or receiver, Winchester does not waive the ability to claim that the Company is still required to pay Winchester a franchise fee in order to maintain its System or Facilities in the Rights-of-way.

Section 15 - It shall be the duty of the Mayor or other lawful designee as soon as practicable after the passage of this Ordinance to offer for sale at public auction said franchise and privilege. In the event that additional interested bidders are identified or express an interest in obtaining a franchise after this initial offering, the additional offering and advertisement to accommodate such bidders is hereby authorized. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the Mayor after he or she has given due notice thereof by advertisement or publication as required by law.

Section 16 - Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the Mayor or other lawful designee upon the date and at the time fixed by him or her in said publication or advertisement for receiving same. Thereafter, the Mayor shall report and submit to the City Commission, at the time

of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The City Commission reserves the right, for and on behalf of Winchester, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the Mayor shall be rejected by the City Commission, it may direct, by resolution or ordinance, said franchise and privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved.

(a) Each bid shall be accompanied by a nonrefundable payment to Winchester in the amount of five hundred dollars (\$500.00) to cover its cost of advertising and other administrative expenses incurred.

(b) In addition, any bid submitted by an entity or person not already owning within the territorial limits of the City of Winchester, plant, equipment, and/or Facilities sufficient to render the service required by this Ordinance must be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent (5%) of the fair estimated cost of the system required to render the service, which check or cash shall be forfeited to the Government in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth (1/4) of the fair estimated cost of the system to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within sixty (60) days, to establish and begin rendering the service in the manner set forth in this Ordinance. Bids shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the system required to render the service. Winchester reserves the right to review any of bidder's supporting documentation that justifies bidder's determination of said estimated cost.

Section 17 - (a) The City, pursuant to this Ordinance, imposes upon the Company a franchise fee in the amount of three percent (3%) of the gross annual revenues received by the Company for the direct sale, distribution, and delivery of natural gas provided by the Company

within the City of Winchester and rendered on its bills (excluding nonrecurring charges as defined in Chapter 807 of the Kentucky Administrative Regulations Section 5:006, now or as hereafter amended). Additionally, the City reserves the right to amend the franchise fee at any time after the one-year anniversary of the effective date of this Ordinance, and upon prior ninety (90) days written notice to the Company. Should the City exercise said right to amend the franchise fee, the City shall receive payment of franchise fees in an amount not to exceed five percent (5%) of the gross annual revenues received by the Company for the direct sale, distribution, and delivery of natural gas provided by the Company within the City of Winchester and rendered on its bills (excluding nonrecurring charges as defined in Chapter 807 of the Kentucky Administrative Regulations Section 5:006, now or as hereafter amended). At a minimum, the franchise fee is intended to apply to gross revenues related to those services which include the franchise fee as part of the tariff filed with the Public Service Commission as of the date of the adoption of this Ordinance, and the Company expressly agrees that it will continue to pay franchise fees on the gross revenues derived from these services for the term of this franchise and any renewals thereof. The Company will also assess and pay the franchise fee on any such gross revenues from revised, amended, or additional tariffs (except for nonrecurring charges in Winchester) unless Winchester specifically indicates that it does not want the fee to apply, and subject to any necessary approval by the Public Service Commission. Calculations of amounts payable hereunder and payments shall commence with the first billing period following the effective date of any franchise agreement arising out of this Ordinance.

(b) The parties acknowledge and agree that the natural gas supplied by certain large volume suppliers is not currently included as part of the gross revenues to which the franchise fee is applied. In the event that Winchester determines during the franchise period that it wishes to pursue the collection of the franchise fee from these suppliers through the Company, it will notify the Company, in advance, of the methodology and procedures for such collection, and be subject to any necessary approval of the Public Service Commission.

(c) The Company shall obtain street cut permits from the City prior to starting construction on any projects in the City. In addition, the Company shall be responsible for complying with all requirements contained in the City of Winchester Code of Ordinances, as amended, and Clark County Subdivision Regulations, as adopted by the City Commission ("Subdivision Regulations"), including, but not limited to, meeting the specifications for road cuts and restoration contained in the Subdivision Regulations and the City of Winchester Code of Ordinances.

(d) No later than ten (10) working days after final acceptance of its bid by Winchester or any subsequent notification of any change in the amount of the fees in this Section 17, the Company shall, if lawfully required, file an application or tariff with the Kentucky Public Service Commission to provide for prompt and satisfactory cost recovery of the amount(s) payable under this Ordinance and any franchise awarded pursuant to its terms for any amounts for which it desires recovery. The Company shall provide Winchester with copies of any tariffs it files with the Kentucky Public Service Commission related to the franchise in order to satisfy the obligations created herein.

(e) If, after a period of sixty (60) days from the filing of the Company's above application, the Kentucky Public Service Commission shall have made no final determination concerning the prompt and satisfactory recovery of amounts payable by the Company under this Section of the Ordinance, then the Company's obligation to pay the amount specified in Section 17(a) of this Ordinance shall be suspended, provided the Company shall first give Winchester ten (10) days' written notice of its intention to suspend payment pending the decision of the said Commission. In the event of suspension of the Company's obligation as herein provided, Winchester shall have the option to terminate this franchise within thirty (30) days of receipt of said written notification from the Company. Notwithstanding the above, any Company that had a previously existing franchise with Winchester shall continue to pay the fees established pursuant to its previous franchise.

Section 18 - (a) Payment of any amount due under this Ordinance shall be made monthly, within thirty (30) days of the end of the preceding calendar quarter. Upon request, and provided the Company has the capability to do so without additional cost, Company shall deposit such payments electronically to an account specified by Winchester. In the event of suspension of the Company's obligation pursuant to Section 16(e) herein, said suspension shall not have application to any amount due hereunder for the preceding calendar month, and the gross income received by the Company during any such suspension period shall be excluded from the Company's annual gross revenues for the purpose of calculating amounts due under Section 17 (a) herein.

(b) No acceptance of any franchise fee payment by Winchester shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount nor shall acceptance be deemed a release to any claim Winchester may have for future or additional sums pursuant to this Ordinance. Winchester shall have the right to inspect the Company's income, financial, and records relating to gross revenues in order to audit, and to re-compute any amounts determined to be payable under this Ordinance. The Company shall respond to a reasonable request for information related to obtaining audit information within ten (10) business days unless agreed otherwise by the parties. This provision shall survive the term of any franchise agreement awarded pursuant to this Ordinance for a period of one (1) year. Any additional amount undisputedly due to Winchester as a result of the audit shall be paid within ten (10) days following written notice to the Company by Winchester which notice shall include a copy of the audit report. If as a result of such audit or review Winchester determines that the Company has underpaid its franchise fee by five percent (5%) or more for any six (6) month period, then, in addition to making full payment of the relevant obligation, it shall reimburse Winchester for all of the actual costs, not to exceed \$3,500, associated with the audit or review. If such audit or review is performed in connection with the granting of a new franchise, and extension of the terms of this franchise, a sale or transfer of control of the Company, or a substantive modification of the terms to, or an

assignment of this franchise, the Company shall reimburse Winchester for up to \$3,500 of the reasonable costs associated with the audit or review including all out-of-pocket costs for attorneys, accountants and other consultants.

(c) In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate equivalent to the ten (10) year U.S. Treasury Note. Overpayments discovered by Winchester or the Company shall be an adjustment on the next monthly payment(s) at an annual rate of interest equivalent to the ten (10) year U.S. Treasury Note.

(d) With respect to its billing of Winchester, Company agrees to, upon request, provide an explanation of any and all billing adjustments or credits including the account(s) impacted and any and all late payments.

Section 19 – Bids offered for purchase of this franchise shall state the bidder's acceptance of the conditions set forth in this Ordinance. If any bid shall include an offer of payment over and above the terms of the franchise, then a certified check for said amount, payable to the City of Winchester, shall be deposited with the Government. This amount shall be in addition to the provision for payments contained in Sections 16 and 17 of this Ordinance, which shall be considered as a condition of this franchise. Any check deposited by an unsuccessful bidder shall be returned when Winchester shall have accepted the bid or bids, which in its judgment is or are the highest and best.

Section 20 – Any violation by the Company, its vendee, Lessee, or successor of the provisions of this franchise or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of any franchise awarded pursuant to this Ordinance and all rights hereunder after written notice to the Company and continuation of such violations, failure or default, as set forth in Section 12 of this Ordinance.

Section 21 – This Ordinance and any franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The

venue for any litigation related to this Ordinance or a franchise shall be in the court of competent jurisdiction in Clark County, Kentucky.

Section 22 - This Ordinance and any franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either Winchester or the Company.

Section 23 - If any section, sentence, clause or phrase of the Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining Ordinance.

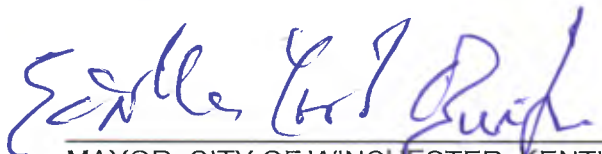
Section 24 - The franchise created by this Ordinance shall become effective upon the duly authorized execution of a franchise agreement following the Winchester City Commission acceptance of the bid(s) for it.

Section 25 - This Ordinance shall become effective on the date of its passage.

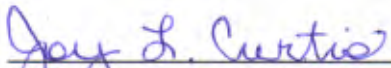
On motion by Commissioner Cox, seconded by Commissioner Flynn, and with unanimous vote, this ordinance passed first reading on April 21, 2020.

On motion by Commissioner Flynn, seconded by Commissioner Cox, and with unanimous vote, this ordinance passed first reading and was adopted.

DATE OF PASSAGE: May 5, 2020


MAYOR, CITY OF WINCHESTER, KENTUCKY

ATTEST:


CITY CLERK