

# FRANCHISE AGREEMENT

## Article I

### DEFINITIONS:

As used in this agreement, the following words and phrases shall have the following meanings:

- (A) "Service Commission" means the Kentucky Public Service Commission.
- (B) "City Commission" means the governing body of the City of Paris.
- (C) "City" means the City of Paris, Bourbon County, Kentucky and any such territory that may in the future be included within the boundaries of the City of Paris.
- (D) "Franchise" shall mean the rights and privileges granted by the Grantor to Grantee under the terms and provisions of this franchise ordinance.
- (E) "Grantee" shall mean Columbia Gas of Kentucky, Inc.
- (F) "Grantor" shall mean the City of Paris, Kentucky
- (G) "Public Right-of-Way" shall mean the surface, the airspace above the surface and area below the surface of any street, highway, alley, avenue, boulevard, sidewalk, pedestrian/bicycle lane or trail, driveway, bridge, municipal utility easement or any other public ways owned, dedicated by plat, occupied or used by the public and within Grantor's geographical limits or boundaries established by applicable law.
- (H) "Revenues" refer to and are those amounts of money which the Grantee receives from its customers within the Grantor's geographical limits or boundaries for the retail sale of gas under rates, temporary or permanent, authorized by the Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Revenues do not include miscellaneous service charges, including but not limited to turn-ons, meter sets, non-sufficient funds, or late fees and interest, which are related to but are not a part of the actual retail sale of gas.
- (I) "System" shall mean the system of works, pipes, pipelines, facilities, fixtures, apparatus, lines, machinery, equipment, structures, appliances, appurtenances or other infrastructure reasonably necessary for the storage, transportation, distribution or sale of natural, artificial or mixed gas to residential and commercial customers and the public generally, within the geographical limits or boundaries of the Grantor.

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**Article II**

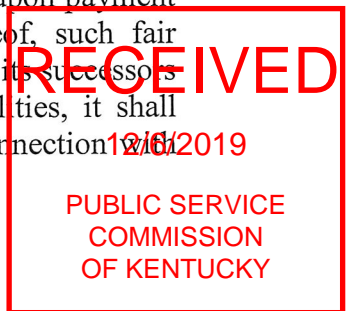
**GRANT OF FRANCHISE:**

- (A) There is hereby created and granted unto Grantee a non-exclusive franchise to enter upon, acquire, construct, operate, maintain, replace and repair in the Public Right-of-Way the System, subject to the provisions of this Agreement. The franchise granted hereunder shall be extended to territories that are annexed by Grantor upon the same terms and conditions herein, subject to the approval of the Commission, if any such approval is required.
- (B) The franchise granted to Grantee by the Grantor shall not be exclusive and the Grantor reserves the right to grant a similar franchise to any other person or entity at any time. In the event the Grantor shall grant to another person or entity during the term hereof a franchise for a gas distribution system within the geographical boundaries or limits of Grantor similar to the one herein granted to Grantee, it is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional grantee than those terms contained herein. Additionally, it is agreed that any such new/additional grantee shall have no right to use any portion of the System without Grantee's written consent.

**Article III**

**TERM EFFECTIVE DATE AND ACCEPTANCE OF FRANCHISE:**

- (A) The term of this Franchise shall be for a term of five (5) years.
- (B) The franchise created here shall become effective upon its final passage and approval by the City, In accordance with applicable laws and regulations, and upon acceptance by the Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the Clerk of the Grantor, If the Grantee does not, within sixty (60) days following passage of this Ordinance, express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, the Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions.
- (C) The terms and conditions of any previous ordinance related to "Gas Franchise" with Columbia Gas are superseded by the terms and conditions hereof.
- (D) On the expiration of this franchise, in the event the same is not renewed, or on the termination of any renewal of said franchise, or on termination of said franchise for any other reason, the plant and facilities of the Grantee installed, constructed and operated hereunder shall, at the option of the City become the property of the City, upon payment to the Grantee, its successors and/or assigns, of a fair valuation thereof, such fair valuation to be determined by agreement between the City and the Grantee, its successors and/or assigns. Grantor agrees that, at the time of such transfer of facilities, it shall assume Grantee's contractual and regulatory obligations maintained in connection with



the system. If the City does not exercise the option hereunder, then Grantee may exercise its rights under Article XI (B). This franchise creates no vested rights in the Grantee and any installation or emplacement of System by the Grantee in the Public Right-of-Way is at the Grantee's risk.

- (E) In addition, the term of the franchise may be extended up to twelve (12) months by agreement of the parties in order to provide for the good faith negotiation of a new franchise.

#### **Article IV**

##### **GRANTEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-WAY:**

The Grantee shall have the right and privilege of constructing, erecting, laying, operating, maintaining, replacing, removing and/or repairing a gas distribution system through, along, across and under the public right-of-way within the geographical boundaries or limits of the Grantor as it now exists or may hereafter be constructed or extended, subject to the inherent reasonable police powers conferred upon or reserved unto the Grantor and the provisions of this Agreement.

#### **Article V**

##### **OPERATION OF SYSTEM - EXCAVATION OF PUBLIC RIGHT-OF-WAY:**

- (A) The System shall always be installed, operated and maintained in good working condition as will enable the Grantee to furnish adequate and continuous service to all its residential, commercial and industrial customers except for Grantee's customers that may be considered as interruptible customers as provided by law, agreement or Grantee's tariff. The System shall be designed, installed, constructed and replaced in locations and at depths which comply with all applicable federal and state laws and regulations regarding minimum safety standards for design, construction, maintenance and operation of gas distribution systems.
- (B) Grantee shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.
- (C) Grantee shall install all pipelines underground at such depth, and in such a manner, so as to not interfere, once installed, with existing pavement, curbs, gutters, underground wires or cables, water or sewer pipes, or any other currently installed infrastructure that is controlled by the Grantor.
- (D) Grantee understands and acknowledges that the City has enacted Ordinance 2018-15 that addresses excavations and construction in public rights-of-way including permitting for work within the right-of-way and for restoration of an excavated street. Grantee agrees to comply with that Ordinance where applicable. Grantor agrees to provide written notice





to Grantee in the event any revisions are made to that Ordinance during the term of this Franchise.

- (E) Pursuant to Ordinance 2018- 15, Grantee is also required to pay an additional amount to Grantor for its permitting of the Grantee's work in the Rights-of-way. These permitting fees shall be in addition to the above franchise fee. These permitting fees may be calculated as an appropriate percentage of gross revenues at the option of the Grantee and remitted to Grantor monthly. These permitting fees are subject to change during the term of the franchise.

## Article VI

### DEGREDAATION/RESTORATION OF PUBLIC RIGHT-OF-WAY:

(A) In the event that Grantor or any other entity acting on behalf of Grantor requests or demands that Grantee remove, move, modify, relocate, reconstruct or adjust any part of the system from their then-current locations within the streets, alleys, and public places of Grantor in connection with a public project or improvement, then Grantee shall relocate, at its expense, the system facilities affected by such project or Improvement. Notwithstanding the foregoing provisions of this paragraph, Grantee shall not be obligated to relocate, at its expense, any of the following:

- i. system facilities that are located on private property at the time relocation is requested or demanded;
- ii. streetscape projects or other projects undertaken primarily for aesthetic purposes or to benefit and paid for by a private property owner;

(B) Grantor and Grantee recognize that both parties benefit from economic development within the boundaries of Grantor. Accordingly, when it is necessary to relocate any of Grantee's facilities within the boundaries of Grantor, Grantor and Grantee shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, Grantor and Grantee shall communicate in a timely fashion to coordinate projects included in Grantor's five-year capital improvement plan, Grantor's short-term work program, or Grantor's annual budget in an effort to minimize relocation of Grantee's facilities. Such communication may include, but is not limited to both parties' participation in a local utility's coordinating council (or any successor organization).

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## Article VII

### COMPENSATION FOR USE OF PUBLIC RIGHT-OF-WAY AND CONSIDERATION FOR FRANCHISE:

- (A) In consideration for the granting and exercise of the rights and privileges created hereunder, and in further consideration of the grant to the Franchisee of the right to make use of Public Right-of-Way, Grantee shall pay to the Grantor, during the entire life of the franchise, a sum equal to three percent (3%) of its Revenues. The fee prescribed herein shall be paid to the Grantor monthly on or before the 30th day after the end of each calendar quarter after the effective date hereof, and the Grantee shall furnish to the Grantor quarterly a statement of Grantee's Revenues.
- (B) Grantee may add a line-item surcharge to the monthly bills of each of its customers located within the geographical boundaries or limits of Grantor, which surcharge may be designated as a franchise fee, in an amount that is sufficient to recover the portion of the franchise fee paid by the Grantee to the Grantor that is attributable to the revenue derived by Grantee from such customer.
- (C) The franchise fee provided herein, together with any charges of the Grantor for water, sewage and garbage services provided by the Grantor to Grantee, and any applicable occupational license fees or sales, ad valorem or other taxes payable to the Grantor by the Grantee under applicable law, shall constitute the only amounts for which Grantee shall be obligated to pay to the Grantor and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that the Grantor, currently or in the future, may charge Grantee or assess against Grantee's property. The franchise fee herein contemplated shall be uniformly and equally applied to all-natural gas companies of like services or any other natural gas service that compete with the Grantee, such that Grantee will be excused from collecting and paying franchise fees and/or taxes if Grantee's competitors are not also required to do so.
- (D) If subsequent to the date of this Agreement, Grantee enters into a substantially similar Franchise agreement with another local government, and that fee exceeds the fee established in this Franchise agreement, then Grantee shall notify the Grantor and the fee negotiated with the Grantor in this Agreement is automatically increased to meet the fee agreed to with the other Grantor. This increase in fee shall take effect as of the effective date of the subsequently entered into Franchise Agreement with another local government.
- (E) The Grantor, through its duly authorized representative and at all times reasonable, shall have access to, and the right to inspect Grantee's books and records that are necessary to confirm the accuracy of the amount of franchise fee being paid to the City.

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## Article VIII

### SERVICE TO NEW AREAS:

- (A) If during the term of this franchise the boundaries of the Grantor are expanded, the Grantor will promptly notify Grantee in writing of any geographic areas annexed by the Grantor during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Grantee by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Grantee may reasonably require in ascertaining whether there exist any customers of Grantee receiving natural gas service in said annexed area. To the extent there are such customers therein, then the revenue of Grantee derived from the retail sale of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Grantee's billing cycle immediately following Franchisee's receipt of the Annexation Notice.
- (B) The failure by the Grantor to advise Grantee in writing through proper Annexation Notice of any geographic areas which are annexed by the Grantor shall relieve Grantee from any obligation to remit any franchise fees to Grantor based upon revenues derived by Grantee from the retail sale of natural gas to customers within the annexed area prior to Grantor delivering an Annexation Notice to Grantee in accordance with the terms hereof.

## Article IX

### BREACH OF FRANCHISE – REMEDIES:

In the event of a breach by Grantee of any material provision hereof, the Grantor may terminate the franchise and rights granted to Grantee hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

- (A) Grantor must deliver to Grantee, by certified or registered mail, a written notice signed by the mayor or other duly authorized member of Grantor's governing body, attested by the Grantor's secretary, and sealed with the official seal of the Grantor. Such notice must:
- i. fairly and fully set forth in detail each of the alleged acts or omissions of Grantee that the Grantor contends constitutes a substantial breach of any material provision hereof,
  - ii. designate which of the terms and conditions hereof the Grantor contends Grantee breached, and
  - iii. specify the date, time, and place at which a public hearing will be held by the governing body of the Grantor for the purpose of determining whether the allegations contained in the notice did in fact occur, provided, however, that the date of such hearing may not be less than thirty (30) days after the date of such notice.





- (B) Within sixty (60) days following the adjournment of the public's hearing described in Subsection (A) above, the Grantor must deliver to Grantee, by certified or registered mail, a written notice signed by the mayor or other duly authorized member of Grantor's governing body, attested by the Grantor's secretary, and sealed with the official seal of the Grantor, setting forth:
- i. the acts and omissions of Grantee described in the first notice that the governing body of the Grantor determines to have in fact occurred and
  - ii. the specific terms and conditions hereof listed in the first notice that the governing body of the Grantor determines to have in fact been breached by such acts or omissions of Grantee.
- (C) The Grantor must permit Grantee the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection (B) above within sixty (60) days after Grantee's receipt of such notice.

## **Article X**

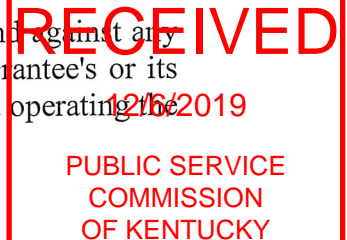
### **FORCE MAJEURE:**

- (A) Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Franchisee is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Franchisee is so prevented shall not be counted against it for any reason.
- (B) The term "force majeure", as used herein, shall mean any cause not reasonably within Franchisee's control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Agreement.

## **Article XI**

### **ADDITIONAL REQUIREMENTS – MISCELLANEOUS PROVISIONS:**

- (A) Grantee shall at all times indemnify and hold harmless the Grantor from and against any and all lawful claims for injury to any person or property by reason of Grantee's or its employees' failure to exercise reasonable care in installing, maintaining and operating the



System. Provided, however, that none of the provisions of this paragraph shall be applicable to the extent the Grantor, its officials, officers, employees, contractors, or agents, were negligent and such negligence was the sole or contributing factor in bringing about injury to any person or property. In such event, any liability shall be apportioned between the Grantor and the Grantee based upon the percentage of fault assigned to each by a court of competent jurisdiction.

- (B) Subject to the City's option under Article III (D), Grantee may remove all or any part of its System upon the expiration or termination of the franchise and rights granted hereby.
- (C) Grantee may transfer or assign the franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation with written notification to the Grantor.
- (D) If any section, subsection or provision of this ordinance or any part thereof is for any reason found or held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of any such section, subsection or provision shall not affect any or all other remaining sections and provisions of this ordinance, which shall remain in full force and effect.
- (E) This agreement shall extend to, be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns.
- (F) To the extent that any other ordinances of the Grantor or portions thereof are in conflict or inconsistent with any of the terms or provisions hereof, then the terms of this Ordinance shall control.
- (G) To the extent any federal or state law or regulation, or Order or rule of the Kentucky Public Service Commission or Grantee's approved tariffs, are in conflict or inconsistent with any terms or conditions of this Franchise, then the terms of such law, regulation, Order, rule or tariff shall control.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of the City of Paris, Kentucky, acting by and through its Mayor, Michael Thornton, and on behalf of Columbia Gas of Kentucky, Inc. acting by and through its President, Herbert A. Miller, Jr.

CITY OF PARIS, KENTUCKY

By: \_\_\_\_\_

Mayor

ATTEST:

Stephanie Setters

City Clerk

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COLUMBIA GAS OF KENTUCKY, INC.

By: Herbert A. Miller, Jr.  
Herbert A. Miller, Jr, President

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**CITY OF PARIS**  
**ORDINANCE NO: 2018-15**  
AN ORDINANCE RELATING TO EXCAVATIONS OF AND  
CONSTRUCTION TO PUBLIC RIGHTS-OF-WAY

WHEREAS, the City of Paris has endured numerous excavations to City streets and is in need of a uniform system to permit, maintain and repair such work to the public rights of way;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF PARIS CITY COMMISSION THAT THE FOLLOWING SECTIONS OF THE CODE OF ORDINANCES BE ADDED:

**Section 1. Permit For Work Within The Right-Of-Way.**

(A) Except during an emergency, individuals or entities shall not disturb, modify, engage in construction activities or change the primary or regulated use of, the roads, streets, rights-of-way, easements or property belonging to or maintained by the City without first applying for and receiving a permit to engage in such activities from the City Manager, which permit shall be signed by the City Manager or designee.

(B) The applicant or permittee shall have the right to appeal the decision of the City Manager to deny or revoke a permit application. The appeal must be made to the Board of Commissioners within 10 business days from issuance of notice of denial or revocation by delivery to the City Clerk. An appeal does not stay the denial or revocation of the permit. A hearing shall be held by the Board of Commissioners within a reasonable time.

(C) The City Manager or designee shall promulgate and publish a Right-of-Way Standard that specifies rules, regulations, guidelines and procedures related to the permitting of any work, construction, installation, maintenance, closure, temporary use, disturbance, modification or change of the primary usage within the roads, streets or rights-of-way belonging to or maintained by the City. The Right-of-Way Standard shall be provided to the City Clerk and all providers of utility services, whether public, private or municipal entities.

(D) At the time of application, the necessary permit fee must be paid as follows:

<u>Permit Type</u>	<u>Fee</u>
Street Cut - Service Line	\$50
Street Cut - Minor	\$100
Street Cut - Major	\$300
Street/Sidewalk Closure	\$20
Driveway	\$20
Sidewalk	\$20
Storage Pod	\$20
Dumpster	\$20
Tree Trimming/Landscape	\$20
Temporary Parking	\$20
General	\$20
Franchisee	\$1,500



**Section 2. Restoration of Excavated Street.**

(A) On any project that damages city owned or maintained pavement the permittee will follow the established standards in repairing the damage and the city will coordinate, perform or have performed the final pavement repairs. Permit applicants that may damage or excavate pavement shall pay a fee to the city that will be equal to the pavement repair estimate plus 15%. The City Manager or their designee shall prepare the estimate which will be based upon the proposed scope of work, category of road and either the City's competitively bid pavement repair contract or prevailing rates for such work. Exceptions to this rule must be approved by the City Manager as outlined in the Right-of-Way Standard.

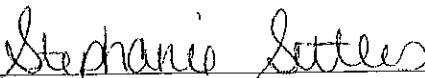
(B) The City will require bonding of all excavation, trenching, boring or other construction work performed on or under the pavement surface as detailed in the Right-of-Way Standard. The City reserves the right to require bonding on other work that damages or has the potential to damage City property. The lack of bonding or an expired bond does not release the permittee or contractor from any liability related to work in the right-of-way or on City owned or maintained property. The Permittee will be the responsible party for all bonding, not the Permittee's subcontractor.

The foregoing ordinance shall take effect immediately upon execution and publication.

The foregoing ordinance was introduced and read for the first time as the City Commission's regular meeting of November 27, 2018. Read for the second time, adopted and approved at its regular meeting of December 11, 2018.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

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