



**City of New Fairview
City Council
Special Called Meeting
999 Illinois Lane
Monday, January 15, 2024, at 7:00 pm**

REGULAR SESSION

1. **Call to Order and Determination of Quorum**
2. **Pledge to the Flags.**
 - A. **United States of America**
 - B. **Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible.**
3. **Announcements & Special Recognitions:** The agenda shall provide a time when proclamations, recognitions, general reports, and updates may be presented by the City Council.
4. **City Administrator's Report:** The City Administrator's Report may provide information on status of current city projects and other projects affecting the City, meetings and actions of the city's boards and commissions, upcoming local community events, including but not limited to departmental operations and capital improvement project status. No action will be taken with respect to this report.
5. **Public Comment:** The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens with the opportunity to speak, there is a three-minute limit on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.
6. **Consent Agenda:** All matters as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. An item can be removed from the consent agenda by the City Administrator, Mayor, or any member of the City Council and will be considered after approval of the consent agenda.
 - A. **Approve the City Council Meeting minutes for Jan. 8, 2024.**
 - B. **Approve the September 2023 Financial Reports.**
7. **New Business:** All matters listed in New Business will be discussed and considered separately.
 - A. **Receive, consider, and act on an Ordinance granting a franchise agreement with Atmos Energy Corporation.**

B. Receive, consider, and act on a Resolution approving the First Amendment to the Schaumburg & Polk, Inc Professional Services Agreement to complete and submit an application for a Certificate of Convenience and Necessity for water and wastewater services.

8. Executive Session: Recess to Executive Session to discuss matters relating to real property pursuant to §551.072, Texas Government Code; deliberation of economic development negotiations pursuant to §551.087, Texas Government Code; discuss personnel matters pursuant to §551.074, Texas Government Code; discuss IT network or critical infrastructure security pursuant to §551.089, Texas Government Code; and to consult with the City Attorney pursuant to §551.071, Texas Government Code. The Council may go into closed session at any time when permitted by Chapter 551, Texas Government Code or Chapter 418, Texas Tax Code. Before going into closed session, a quorum of the Council must be present, the meeting must be convened as an open meeting pursuant to proper notice, the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code authorizing the closed session.

A. § 551.071(2): Consultation with the City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act regarding:

1. City Secretary

2. Possible property acquisition that is east of South County Line, West of FM 407 and North of Dove Hollow Lane

B. §551.074: (a) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee: City Secretary.

C. Section 551.072: to deliberate the purchase, exchange, lease, or value of real property.
1. Possible property acquisition that is east of South County Line, West of FM 407 and North of Dove Hollow Lane.

9. Return to Open Session: Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.

10. Mayor & Council Member Announcements: The City Council may hear or make reports of community interest provided no action is taken or discussed. Community interest items may include information regarding upcoming schedules of events, honorary recognitions, and announcements involving imminent public health and safety threats to the city. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

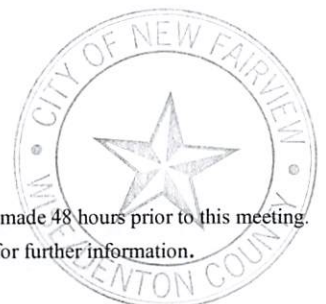
11. Adjournment

I, the undersigned authority, do hereby certify the above notice of the meeting of the City Council of New Fairview, is a true and correct copy of the said notice that I posted on the official posting place at New Fairview City Hall, FM 407, New Fairview, Texas, a place of convenience and readily accessible to the general public at all times, and on its website, said notice being posted this 12th day of January, 2024 at 5:00 PM at least 72 hours preceding the meeting time.



Brooke Boller, City Secretary

SEAL:





**City of New Fairview
City Council
Special Called Meeting Minutes
999 Illinois Lane
Monday, January 8, 2024, at 7:00 pm**

**CITY COUNCIL
Mayor John Taylor
Mayor Pro Tem Steven King
Place 1 Councilman Harvey Lynn Burger
Place 3 Councilwoman Sarah Adams
Place 5 Councilman Richard Greene**

**City Staff
John Cabrales Jr, City Administrator
Brooke Boller, City Secretary
Jerry Drake, City Attorney – Virtual**

**Absent
Place 2 Councilman Peter Kozlowski**

WORK SESSION

1. Call to Order and Determination of Quorum (**Work Session called to order by Mayor John Taylor at 8:10 pm; Roll Call with the above-mentioned names.**)
2. Receive a report and hold a discussion regarding recent water and wastewater developments. **Council received an update from City Administrator John Cabrales Jr. Council agreed to move forward with the CCN process.**
3. Adjournment
**Motion: Mayor Pro Tem Steven King
Second: Councilman Richard Greene
Vote: All in Favor
Result: Work Session was adjourned at 8:32pm.**

REGULAR SESSION

1. Call to Order and Determination of Quorum (**Regular Session called to order by Mayor John Taylor at 7:00 pm; Roll Call with the above-mentioned names.**)
2. Pledge to the Flags.
 - A. United States of America
 - B. Texas Flag Honor the Texas Flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible.

3. Announcements & Special Recognitions: The agenda shall provide a time when proclamations, recognitions, general reports, and updates may be presented by the City Council.
4. City Administrator's Report: The City Administrator's Report may provide information on status of current city projects and other projects affecting the City, meetings and actions of the city's boards and commissions, upcoming local community events, including but not limited to departmental operations and capital improvement project status. No action will be taken with respect to this report.
5. Public Comment: The City Council invites persons with comments or observations related to city issues, projects, or policies to briefly address the City Council. Anyone wishing to speak should sign in with the City Secretary before the beginning of the City Council Meeting. In order to expedite the flow of business and to provide all citizens with the opportunity to speak, there is a three-minute limit on any person addressing the City Council. State law prohibits the City Council from discussing or taking action on any item not listed on the posted agenda.
6. Consent Agenda: All matters as Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. An item can be removed from the consent agenda by the City Administrator, Mayor, or any member of the City Council and will be considered after approval of the consent agenda.
 - A. Approve the City Council Meeting minutes for December 4, 2023.
 - B. Approve the September 2023 Financial Reports.---**Removed by John Cabrales Jr.**
 - C. Approve the October – December 2023 Quarterly Financial Report.
Motion: Councilman Harvey Lynn Burger
Second: Councilwoman Sarah Adams
Vote: All in Favor
Result: Council approved the City Council Meeting minutes for December 4, 2023 as well as the October – December 2023 Quarterly Financial Report.
7. New Business: All matters listed in New Business will be discussed and considered separately.
 - A. Receive, consider, and act on approving an Interlocal Agreement with Upper Trinity Groundwater Conservation District.
Motion: Mayor Pro Tem Steven King
Second: Councilman Richard Greene
Vote: All in Favor
Result: Council approved an Interlocal Agreement with Upper Trinity Groundwater Conservation District to assist the City with the assessment of Certification Statements, for certain plats, to ensure they comply with the new state law.
 - B. Hold a public hearing for the completion of the TxCDBG 2021-22 project.
Opened: 8:00pm
Closed: 8:05pm
 - C. Receive, consider, and act on appointing members to the Planning and Zoning Commission.
Motion: Councilman Richard Greene
Second: Mayor Pro Tem Steven King
Vote: All in Favor

Result: Council approved the appointment of Don Duval to the Planning and Zoning Commission, Place 5.

8. Executive Session: Recess to Executive Session to discuss matters relating to real property pursuant to §551.072, Texas Government Code; deliberation of economic development negotiations pursuant to §551.087, Texas Government Code; discuss personnel matters pursuant to §551.074, Texas Government Code; discuss IT network or critical infrastructure security pursuant to §551.089, Texas Government Code; and to consult with the City Attorney pursuant to §551.071, Texas Government Code. The Council may go into closed session at any time when permitted by Chapter 551, Texas Government Code or Chapter 418, Texas Tax Code. Before going into closed session, a quorum of the Council must be present, the meeting must be convened as an open meeting pursuant to proper notice, the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code authorizing the closed session.
 - A. § 551.071(2): Consultation with the City Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act regarding:
 1. City Secretary
 2. Possible property acquisition that is east of South County Line, West of FM 407 and North of Dove Hollow Lane -- **Tabled**
 - B. §551.074: (a) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee: City Secretary. -- **Tabled**
 - C. Section 551.072: to deliberate the purchase, exchange, lease, or value of real property.
 1. Possible property acquisition that is east of South County Line, West of FM 407 and North of Dove Hollow Lane. -- **Tabled**
9. Return to Open Session: Discuss and take appropriate action, if any, resulting from the discussions conducted in Executive Session.
10. Mayor & Council Member Announcements: The City Council may hear or make reports of community interest provided no action is taken or discussed. Community interest items may include information regarding upcoming schedules of events, honorary recognitions, and announcements involving imminent public health and safety threats to the city. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.
11. Adjournment
Motion: Councilman Richard Greene
Second: Mayor Pro Tem Steven King
Vote: All in Favor
Result: Regular Session was adjourned at 8:10pm.

MINUTES APPROVED ON THIS, THE 15TH DAY OF JANUARY 2024

John Taylor, Mayor

Brooke Boller, City Secretary



CITY COUNCIL AGENDA MEMO

Prepared By: John Cabrales Jr, City Administrator

January 15, 2024

Ordinance for Atmos Energy Corporation Franchise Agreement

DESCRIPTION:

Receive, consider, and act on an Ordinance granting a franchise agreement with Atmos Energy Corporation.

BACKGROUND INFORMATION:

The City was approached by Atmos Energy Corporation (Company) about entering into a franchise agreement for Atmos to construct, maintain and operate pipelines and equipment in the city, for the transportation, delivery, sale, and distribution of gas in, out of, and through the city. Atmos has agreed to pay the City a five percent (5%) franchise fee of the gross revenues received within the city, for the use of the public rights-of-ways. The City agrees that this franchise fee will be paid in lieu of other required fees and charges for the use of the rights-of-ways. Also, this is a non-exclusive agreement, so the City can enter into other similar agreements for the transportation and sale of gas.

The term of the agreement is from January 1, 2024, through December 31, 2039. The Franchise shall be extended under the same terms and condition for up to two (2) additional five (5) year terms, unless written notice of intent to renegotiate is provided by either the City or Company at least 180 days prior to the expiration of any term. In the event either party does not wish to renew the Franchise under the same terms and conditions, the parties agree to enter into good faith negotiations of the Franchise. This obligation to engage in negotiations does not obligate either party to agree to any specific changes in the Franchise as a result of such negotiations.

The terms state that Atmos must obtain any permits required by the City for construction within City Rights-of-Way. Under no circumstances shall the Company or its agents be required to pay for any permit. It shall not be necessary for the Company to obtain Right-of-way permits for the laying of service lines from the mainline pipes of the Company to its Customers if no work will take place in City Rights-of-Way. It shall not be necessary for the Company to obtain a permit in advance of resolving an Emergency. In the event of an Emergency, the Company shall

notify the City Administrator no later than ten (10) days after the last day of the Emergency, along with information that describes the circumstances of the Emergency.

If Company desires to install System Facilities on or under public parkland or other City-owned property that is not a City Rights-of-Way, it shall seek specific permission for such installation from City and shall proceed in coordination with City and in compliance with all applicable State laws, including Chapter 26 of the Texas Parks and Wildlife Code, and with all applicable City ordinances, rules, and regulations.

The City shall provide Company with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. The City shall notify Company as soon as reasonably possible of any projects that will affect Company's facilities located in the public rights-of-way. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within City Rights-of-Way, the Company shall do so as soon as practically possible with respect to the scope of the project. In no event shall the Company be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to the Company by the City.

If the City shall elect to alter or change the grade or alignment of the City Rights-of-Way, or any water pipe, wastewater pipe, or any City owned overhead or underground structure for a governmental purpose, so as to conflict with the System Facilities of the Company, the Company shall remove or relocate, as necessary, all of its facilities at its expense, unless such work is for the primary purpose of beautification. However, if such work is being performed because of, or in conjunction with, a private development project, the private developer may be required to reimburse the Company for the cost of removal or relocation of its facilities. Schedules for this work shall be developed by the designated representatives of the Company and the City.

The financial impact of this agreement is listed in the Financial Consideration section of the proposed agreement is attached.

The vision for Atmos Energy is to be the SAFEST provider of natural gas services. Atmos invests more than \$1 billion per year on system upgrades in order to be the safest provider of natural gas services. To enhance safety further, Atmos has an AMLD vehicle traveling through customer and business neighborhoods in communities, sniffing for possible natural gas leaks. In the last year thousands of leaks, within the 25 counties representing the Mid-Tex Division, were detected, and managed before the customer realized there was a problem. Atmos does have franchise agreements with the cities of Aurora, Boyd, Bridgeport, Decatur, Justin, Newark, Northlake, Paradise, Rhome, and Runaway Bay.

Atmos Energy has been serving Wise and Denton County for more than 30 years. They have a service center available for any emergencies or issues in Boyd as well as Denton. They follow strict protocols to ensure step-by-step measures are followed to resolve natural gas issues as soon as safely possible. Atmos also tries to support communities through donations to

nonprofits, schools, and first responders. In the last year, more than \$35,000 has been donated to organizations in Wise County alone.

The Atmos Franchise Agreement was first discussed by the council at the June 20, 2022, meeting, and staff was directed to bring back an ordinance for this franchise agreement. On July 18, 2022 the City Council approved a Franchise Agreement (Ordinance #202207-03-240). Unfortunately, Atmos did not approve the Franchise Agreement because the template that was used was outdated. Staff and the City Attorney have worked with the Atmos attorney on revising the originally approved Agreement to come up with the current Agreement in this Ordinance. The revised Franchise Agreement was placed on the November 6, 2023 meeting agenda, but City Council had some questions that could not be answered by staff. City Council delayed the consideration of the Franchise Agreement until their questions could be answered. The answers to those questions were emails to the City Council on January 10, 2024. The Franchise Agreement is placed on this City Council meeting agenda because Pam Hughes, Manager of Public Affairs for Atmos, will be present at the meeting to answer any additional questions.

Staff recommend approval of the ordinance.

FINANCIAL CONSIDERATION:

Atmos Energy agrees to pay the City, on or before May 15, 2024, and shall be for the privilege period of January 1 through March 31, 2024. Each succeeding payment shall be for the privilege period of the quarter preceding the quarter in which the payment is due. The final payment under the initial term of this franchise shall be due on or before February 15, 2040, and shall be for the privilege period of October 1 through December 31, 2039. The sum of money shall be equivalent to five percent (5%) of the Gross Revenues.

Gross Revenues shall mean:

1. all revenues received by the Company from the sale of Gas to all classes of Customers (excluding Gas sold to another non-affiliate gas utility in the city for resale to its Customers within the City) within the City including base rate revenues and revenues from the Company's purchased gas adjustment tariff;
2. all revenues received by the Company from the transportation of Gas through the System of the Company within the City to Customers located within the City (excluding Gas transported to another non-affiliate gas utility in the city for resale to its Customers within the City);
3. the value of Gas transported by the Company for Transport Customers through the System of the Company within the City (excluding Gas transported to another non-affiliate gas utility in the city for resale to its Customers within the City), with the value

of such Gas to be established by utilizing Company's monthly Weighted Average Cost of Gas charged to industrial Customers as reasonably near the time as the transportation services is performed; and

4. "Gross Revenues" shall also include state gross receipts tax, contributions in aid of construction ("CIAC") and the following "miscellaneous charges": charges to connect, disconnect or reconnect Gas and charges to handle returned checks from consumers within the City.

Gross Revenues shall not include:

1. revenues billed but not ultimately collected or received by Company;
2. the revenue of any affiliate or subsidiary of Company;
3. sales tax and franchise fees paid to the City;
4. interest or investment income earned by Company; and
5. monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way.

RECOMMENDED MOTIONS:

I move to **Approve/Deny** an ordinance granting a franchise agreement with Atmos Energy Corporation.

ATTACHMENT(S):

1. Atmos Energy Franchise Agreement Ordinance 202401-01-104

ORDINANCE NO. 202401-01-104

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF NEW FAIRVIEW, DENTON AND WISE COUNTIES, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; RESERVING MUNICIPAL AUTHORITY; PROVIDING FOR INDEMNITY TO THE MUNICIPALITY AND INSURANCE BY ATMOS ENERGY CORPORATION; REQUIRING BOOK AND RECORD KEEPING; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE CITY RIGHTS-OF-WAY; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PROVIDING AN EFFECTIVE DATE AND TERM; AND REPEALING ANY PREVIOUS GAS FRANCHISE ORDINANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS:

SECTION 1. DEFINITIONS:

- 1.1. “Affiliate” shall mean in relation to Atmos Energy, a person that controls, is controlled by, or is under common control with Atmos Energy. As used in this definition, the term “control” means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of such Person, or with respect to a Person that is not a corporation, the power to direct the management or policies of such person, whether by operation of law, by contract, or otherwise.
- 1.2. “City” shall mean the City of New Fairview, Texas, a municipality operating under the laws of the State of Texas, and includes the territory as currently is or may in the future be included in its boundaries.
- 1.3. “City Council” shall mean the governing body of the City of New Fairview, Texas.
- 1.4. “City Administrator” shall mean the City Administrator of the City, or his or her duly authorized representative.
- 1.5. “City Rights-of-Way” shall mean the area on, below, or above a public roadway, highway, street, sidewalk, alley, waterway, or utility easement of the City, as they now exist or may hereafter be constructed, opened, laid out, or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.
- 1.6. “Company” shall mean the Mid-Tex Division of the Atmos Energy Corporation, a corporation organized and existing under and by virtue of the laws of the State of Texas and Virginia, authorized to transact and actually transacting business in the State of Texas, acting by and through its duly authorized legal representatives.
- 1.7. “Customer” shall mean any person or organization being billed for gas services, including transportation, whether used by him or her, or by others.
- 1.8. “Emergency” is defined as sudden and unforeseeable damage or malfunction of a portion of the Company’s System that creates a threat to life, health, or property.

- 1.9. “Franchise” shall mean this Ordinance, and all rights and obligations established herein.
- 1.10. “Gas” shall mean natural gas and any synthetic gas distributed by the Company through its System.
- 1.11. “Gross Revenues” shall mean:
- (a) all revenues received by the Company from the sale of Gas to all classes of Customers (excluding Gas sold to another non-affiliate gas utility in the city for resale to its Customers within the City) within the City including base rate revenues and revenues from the Company’s purchased gas adjustment tariff;
 - (b) all revenues received by the Company from the transportation of Gas through the System of the Company within the City to Customers located within the City (excluding Gas transported to another non-affiliate gas utility in the city for resale to its Customers within the City);
 - (c) the value of Gas transported by the Company for Transport Customers through the System of the Company within the City (excluding Gas transported to another non-affiliate gas utility in the city for resale to its Customers within the City), with the value of such Gas to be established by utilizing Company’s monthly Weighted Average Cost of Gas charged to Industrial Customers as reasonably near the time as the transportation services is performed; and
 - (d) “Gross Revenues” shall also include state gross receipts tax, contributions in aid of construction (“CIAC”) and the following “miscellaneous charges”: charges to connect, disconnect or reconnect Gas and charges to handle returned checks from consumers within the City.
 - (e) “Gross Revenues” shall not include:
 - i. revenues billed but not ultimately collected or received by Company;
 - ii. the revenue of any affiliate or subsidiary of the Company;
 - iii. sales tax and franchise fees paid to the City;
 - iv. interest or investment income earned by the Company; and
 - v. monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City’s right of way.
- 1.12. “Industrial Customer” shall mean a customer meeting the definition of Industrial Customer contained in the applicable tariff on file with the City that takes service under either Rate I or a special contract.
- 1.13. “System” or “System Facilities” shall mean all of the Company’s pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections and any other equipment or instrumentalities used in or incident to providing delivery, transportation, distribution, supply and sales of Gas for heating, lighting, power, and any other purpose for which Gas may now or hereafter be used, located within the corporate limits of the City.
- 1.14. “Transport Customer” shall mean any person or entity for which Company transports Gas through

the System of Company within the City to Customers within the City.

SECTION 2. GRANT OF AUTHORITY:

2.1. The City hereby grants to the Company consent to use and occupy the present and future City Rights-of-Way for the purpose of constructing, maintaining, operating, and replacing all or any portion of the System used for the delivery of Gas to Customers located within the City's boundaries, as they may be amended from time to time said consent being granted for a term ending December 31, 2039. The Franchise shall be extended under the same terms and condition for up to two (2) additional five (5) year terms, unless written notice of intent to renegotiate is provided by either the City or Company at least 180 days prior to the expiration of any term. In the event either party does not wish to renew the Franchise under the same terms and conditions, the parties agree to enter into good faith negotiations of the Franchise. This obligation to engage in negotiations does not obligate either party to agree to any specific changes in the Franchise as a result of such negotiations.

2.2. Nothing in this agreement shall prevent the Company from assigning this Franchise provided the City is informed of such assignment. It is not necessary to inform the City of a corporate reorganization not involving a third party. An assignment is valid only if the assignee accepts all of the terms and conditions contained herein.

SECTION 3. CITY'S RESERVATION OF RIGHTS AND AUTHORITY:

3.1. In granting this Franchise, it is understood that the lawful power vested in the City to regulate all public utilities within the City, to regulate the local rates of public utilities within the City, and to require all persons or corporations to uphold and perform all prescribed duties and undertakings is expressly reserved. Except as expressly provided in this Ordinance, the City does not, in granting this Franchise, surrender, lose, waive, impair, or lessen its powers under the City's charter (if any), ordinances and other applicable law. The rights, privilege, and franchise granted hereunder are non-exclusive, and are subject to such lawful changes by any charter provision or ordinance as may be necessary to the public health and safety by City in the exercise of its lawful police powers.

3.2. The City reserves to itself the general right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of the Company's use of the City Rights-of-Way to ensure the rendering of efficient public service and the maintenance of the Company's System in good repair throughout the term of this Franchise.

3.3. Nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for Gas or to provide and fix a scale of prices for Gas and other charges to be charged by the Company to residential, commercial, and industrial Customers, or any combination of such Customers, within the territorial limits of the City.

SECTION 4. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF COMPANY FACILITIES:

4.1. The Company is hereby authorized to lay, maintain, construct, operate, and replace its System within City Rights-of-Way, but before any work is to be performed, the Company must obtain any permits required by the City for construction within City Rights-of-Way in accordance with the ordinances or process in place at the time the work is performed. Under no circumstances shall the

Company or its agents be required to pay for any permit. It shall not be necessary for the Company to obtain Right-of-way permits for the laying of service lines from the mainline pipes of the Company to its Customers if no work will take place in City Rights-of-Way. It shall not be necessary for the Company to obtain a permit in advance of resolving an Emergency. In the event of an Emergency, the Company shall notify the City Administrator no later than ten (10) days after the last day of the Emergency, along with information that describes the circumstances of the Emergency.

4.2. The Company's System shall be located, installed, and maintained so that, to the extent practicable, the system does not interfere with any improvements the City may deem proper to make. The Company also agrees not to unreasonably obstruct the free use of the City Rights-of-Way.

Company shall construct its System Facilities in conformance with City ordinances or regulations adopted pursuant to authority delegated by ordinance, in order to minimize interference with traffic. The location of all Company's System Facilities shall be fixed in coordination with and under the supervision of the City, and as provided in the permit issued by the City. When Company makes, or causes to be made, excavations, or places, or causes to be placed, obstructions in any City Rights-of-Way, Company shall place, erect, and maintain barriers and lights to identify the location of such excavations or obstructions.

4.3 In determining the location of Company's System Facilities within City, Company shall work with the City to minimize interference with then-existing underground structures of City or other utility franchisees. Likewise, in determining the location of the facilities of the City and other utility franchisees within City, City shall minimize interference with the existing System Facilities of Company and, to the extent allowed by law, shall require other utility franchisees to minimize interference with existing System Facilities of Company. In the event of a conflict between the location of Company's System Facilities and the location of the facilities of City or other utility franchisees within City Rights-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.

4.4 If Company desires to install System Facilities on or under public parkland or other City-owned property that is not a City Rights-of-Way, it shall seek specific permission for such installation from City and shall proceed in coordination with City and in compliance with all applicable State laws, including Chapter 26 of the Texas Parks and Wildlife Code, and with all applicable City ordinances, rules, and regulations.

4.5 Company shall designate an individual or individuals as the person or persons primarily responsible for communications with the City and authorized to speak for and represent the Company in such communications. The City shall be entitled to contact the designated individual or individuals on any matters associated with Company's use of the City Rights-of-Way, and Company's performance of its obligations under this Franchise. Company shall promptly communicate with the City of New Fairview Emergency Contact in the event Company becomes aware of Gas leaks on its system or significant unplanned disruption of service to multiple Customers within the City for reasons other than non-payment, meter tampering, or other Customer-driven reason. Company shall also notify the City when Company expects to undertake work that will result in disruption of service for a significant period of time to multiple Customers.

4.6. A copy of the City's capital improvement plan ("CIP") for the upcoming budget year shall be made available on the City's website or upon request. The City should notify the Company's local representative of any major change to the CIP. The Company or contractors working on behalf of the Company shall not be required to pay fees for permits that must be obtained from the City for street cutting, excavations,

or other work in City Rights-of-Way in connection with the Company's operations. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within City Rights-of-Way, the Company shall do so as soon as practically possible with respect to the scope of the project. In no event shall the Company be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to the Company by the City.

4.7 Upon reasonable request by City for a public health, safety, or welfare purpose, or to generally inform the City's planning for public projects, the Company shall provide maps in a digital format showing the location of its System Facilities and shall cooperate with the City in locating its System Facilities when necessary to avoid conflict and protect the health and safety of the public. Under no circumstances shall the City rely solely on maps previously provided by the Company for the purpose of avoiding conflict with Company's System Facilities. All maps temporarily provided by the Company to the City shall be deemed confidential and proprietary, and will be provided solely for the City's use.

4.8. If, during the period of this Franchise, the City shall elect to alter or change the grade or alignment of the City Rights-of-Way, or any water pipe, wastewater pipe, or any City owned overhead or underground structure for a governmental purpose, so as to conflict with the System Facilities of the Company, the Company shall remove or relocate, as necessary, all of its facilities at its expense, unless such work is for the primary purpose of beautification. However, if such work is being performed because of, or in conjunction with, a private development project, the private developer may be required to reimburse the Company for the cost of removal or relocation of its facilities. Schedules for this work shall be developed by the designated representatives of the Company and the City. If such representatives cannot agree on the schedule, the City Administrator, after consultation with the Company, shall establish a schedule.

This schedule shall provide for a minimum of thirty (30) days to exist between the time the schedule is furnished to the Company and the time that any specific work to be done by the Company covered in the schedule is to begin. When Company is required by City to relocate its System Facilities, the City shall work with the Company to obtain a safe and suitable alternative location. The Company shall be required to relocate facilities in accordance with the terms of this Franchise and the City's Rights-of-Way permit. The Company shall not be required to relocate System Facilities to a depth greater than four (4) feet, unless to avoid conflict with the City's infrastructure and prior agreement is reached between the City and Company.

4.9. When the Company is required to remove or relocate its System Facilities to accommodate work by the City without reimbursement from the City, or at the City's direction, the Company shall have the right to seek recovery of relocation costs as provided by state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of the Company to seek or recover a surcharge from Customers for the cost of relocation pursuant to applicable state and/or federal law. The City shall not oppose recovery of relocation costs when Company is required by City to perform the relocation. City shall not require that Company document its request for reimbursement as a pre-condition to recovery of such relocation costs. Notwithstanding any provision of this agreement, the City shall have the right to participate in and challenge any other capital costs or expenses of the Company and request full documentation to the full extent provided by state law.

4.10. Whenever the City applies to be reimbursed by the state or federal government for a public improvement which includes the removal or relocation of System Facilities by the Company, the City shall attempt to notify the Company about such application within a reasonable amount of time for the Company to provide the City with cost and expense documentation, so that the City can include such information in the application. This does not apply if the inclusion of the Company's costs and expenses

would diminish the amount of funds available to the City. Upon receipt of reimbursement funds from the federal or state agency, the City shall remit to the Company, within thirty (30) days of receipt, the Company's portion of the funds related to the relocation or removal of its facilities.

4.11. If the City transfers or abandons any City Rights-of-Way in which the Company has System Facilities, the City will condition the abandonment or transfer of such property on preserving the Company's right-of-way. If the party to whom the City Right-of-Way is transferred or abandoned requests Company to remove or relocate its System Facilities and Company agrees to such removal or relocation, such removal or relocation shall be done at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another City Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

4.12 When performing work within City Rights-of-Way, the Company shall place, or cause to be placed, appropriate barriers to mark excavations or obstructions. Company must endeavor to minimize interference with traffic on City Rights-of-Way. If Company personnel damage any City facilities (excluding City Rights-of-Way), the Company shall notify the City and shall reimburse the City for its cost of repairing the damage. When constructing or repairing facilities in City Rights-of-Way, City agrees to minimize interference with then existing facilities of the Company and shall instruct other users of City Rights-of-Way to minimize interference with existing facilities of the Company. If City personnel damage a part of the System, the City shall notify the Company and shall reimburse its cost of repairing the damage. Requests for reimbursement under this section are limited to actual, documented costs for the repair, including lost product, materials, equipment, and labor. Reimbursement does not include lost profits, administrative costs, or other incidental costs. City and Company agree to notify the appropriate personnel whenever such restoration becomes necessary. The Company and City may separately agree to enter into a reciprocal arrangement for limited circumstances creating an exception to this section where each party bears the cost and/or responsibility of repairing or replacing damaged facilities or pavement.

4.13. For new construction served from a main that lies in City Right-of-Way, Company agrees to install meters adjacent to a building on that property when practical and may only install a meter within a City Right-of-Way if the City Administrator agrees with the location of the placement. For any premises served from a main that lies in alley right-of-way, Company may install the meter at the alley if the City Administrator agrees with the location of the placement. Nothing in this Franchise will require the Company to install a meter adjacent to a building when repairing or replacing existing meters. Nothing in this Franchise shall prevent a property owner from requesting that a meter be moved adjacent to a building so long as it is operationally feasible and the property owner agrees to pay the costs of relocation, including any additional service line necessary to accommodate the request. If a new meter is installed in or near a City Right-of-Way, Company agrees to discuss with the City Administrator the aesthetics of meter placement, provided that aesthetic accommodations will not endanger the public or the integrity of the System. This section does not require the Company to install any non-standard equipment and in no event shall underground meters be required.

4.14 Whenever City shall decide to make public improvements in the City Rights-of-Way in which the Company's System Facilities already exist or in which the Company may propose to install its System Facilities, the Company will be provided the opportunity, at no expense to City, in advance of such improvements to renew such System Facilities, if defective or inadequate in size and to lay System Facilities, or renew same, if inadequate in size or defective, to the property lines where buildings may be located provided such activities do not delay the City's public improvements.

The Company shall be given written notice of the intention of City to make major public improvements in any such City Rights-of-Way. Within ninety (90) days from receipt of such notice, the Company, if it has determined a need, shall initiate work, and thereafter proceed in a workman-like manner to completion of the necessary work and shall complete such work within three (3) months of being granted a permit to preclude the delay of said public improvements. The Company shall take reasonable measures to ensure uninterrupted service to its Customers and shall reconnect all customer service lines disconnected in the normal course of construction at its own expense. If the Company should fail to so proceed, and any street or alley is thereupon paved, except in an Emergency or in response to a request for initiation of new service, the Company shall for three (3) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose except in response to an Emergency or a request for initiation of new service. All pavement cuts or excavations within the three-year period, except in response to an Emergency or in response to a request for initiation of new service, shall be performed only upon written permission of the City under such terms and conditions as the City may prescribe.

SECTION 5. INDEMNITY & INSURANCE:

5.1 IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, THE COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, EMPLOYEES (CITY AND SUCH OTHER PERSONS AND ENTITIES BEING COLLECTIVELY REFERRED TO HEREIN AS “INDEMNITEES”), FROM AND AGAINST ALL SUITS, ACTIONS OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY DEATH, INJURIES TO, OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF, OR OCCASIONED BY THE COMPANY’S INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS IN CONNECTION WITH THE COMPANY’S CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, REPAIR, USE, OPERATIONS, OR DISMANTLING OF SYSTEM FACILITIES OR THE COMPANY’S PROVISION OF SERVICE; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO THE EXTENT ANY LIABILITY IS DETERMINED TO HAVE RESULTED FROM NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES. IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH THE COMPANY AND CITY, RESPONSIBILITY, AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY OF THE DEFENSES OF THE PARTIES UNDER TEXAS LAW. FURTHER, IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH THE COMPANY AND CITY, RESPONSIBILITY FOR ALL COSTS OF DEFENSE SHALL BE APPORTIONED BETWEEN CITY AND THE COMPANY BASED UPON THE COMPARATIVE FAULT OF EACH.

5.2 By entering into this Franchise Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas Law, or waive any defenses of the parties under Texas law.

5.3 In the event any action or proceeding shall be brought against the Indemnites by reason of any matter for which the Indemnites are indemnified hereunder, the Company shall, upon notice from any of the Indemnites, at Company’s sole cost and expense, resist and defend the same with legal counsel selected by Company, provided however, that Company shall not admit liability in any matter on behalf

of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of the Company. The Company's obligation to defend shall apply regardless of whether Company is solely or concurrently negligent provided that Indemnitees may be held responsible for the cost of such defense paid for by the Company. Indemnitees shall give the Company prompt notice of the making of any claim or commencement of any action, suit, or other proceeding covered by the provision of this Section. Nothing herein shall be deemed to prevent the Indemnitees at their election and their own expense from cooperating with the Company and participating in the defense of any litigation by their own counsel.

5.4 In fulfilling its obligation to defend and indemnify City, the Company shall have the right to select defense counsel, subject to City's approval, which shall not be unreasonably withheld. The Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Franchise. If the Company fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and the Company shall be liable for all defense costs incurred by City, except as otherwise set out in this Section.

SECTION 6. COMPANY'S DUTIES TO PUBLIC:

6.1. The Company shall furnish reasonably adequate service to the public at reasonable rates and charges; therefore, and Company shall maintain its property, equipment, and appliances in good order and condition.

6.2. The Company shall not discriminate against any person, corporation, firm, or association in the charge for Gas service or in the services rendered under like circumstances to Customers of the same classification. The Company shall not arbitrarily refuse to provide service to any person that it is economically feasible for the Company to serve. The Company shall not directly or indirectly grant any discount, rebate, or use any other device to circumvent the applicable rate schedule.

6.3. The Company shall, at all times during the existence of this Franchise, endeavor to furnish an adequate supply of Gas necessary for the requirements of its Customers in the City.

SECTION 7. PAYMENTS TO CITY:

7.1. As compensation for the rights and privileges conferred by this franchise, the Company shall pay to the City a sum of money equal to five percent (5%) of Gross Revenues. Except as outlined below, payments shall be made quarterly on or before the 45th day following the last day of each calendar quarter on which the franchise fee is based, unless that day falls on a state or federal holiday or a weekend, in which case payment shall be made no later than the next business day. The initial payment for the rights and privileges under this franchise shall be on or before May 15, 2024, and shall be for the privilege period of January 1 through March 31, 2024. Each succeeding payment shall be for the privileged period of the quarter preceding the quarter in which the payment is due. The final payment under the initial term of this franchise shall be due on or before February 15, 2040, and shall be for the privilege period of October 1 through December 31, 2039. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee amount will be paid on or before April 30, 2025, and will be based on the calendar year January 1 through December 31, 2024. The final CIAC franchise fee amount under the initial term will be paid on or before April 30, 2040, and will be based on the calendar

year January 1 through December 31, 2039.

7.2. Payments received after the due date shall be subject to interest charged at the greater of the rate of the prime rate for the due date or the rate for customer deposits under Texas Utilities Code Section 183.003 in effect for the time period involved, from such due date until payment is received by City.

7.3. The Company shall provide a report with each payment, which sets forth the total, in dollars and cents, of the Gross Revenues. At a minimum, the report will show, by Customer class, Gross Revenues and resulting franchise fee attributable to sale of Gas and other miscellaneous charges. In addition, the report will show the amount of franchise fee collected from transportation Customers attributable to the value of Gas transported for the Customers.

7.4. It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charge (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from the Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy the Company's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement, or franchise taxes or charges aforesaid.

7.5. If the Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in the Company's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its City Rights-of-Way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by the Company to the City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

7.6. City shall, within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by the City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected Customers into the city limits no later than sixty (60) days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the sales tax effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments. In no event shall the Company be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax.

SECTION 8. FRANCHISE FEE RECOVERY TARIFF:

8.1. The Company may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.

8.2. City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates, or tariff which provide for 100% recovery of such franchise fees as part of the Company's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the Company's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by the Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by the Company.

8.3. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by the Company.

SECTION 9. BOOKS AND RECORDS:

9.1. The Company shall keep complete and accurate books of accounts and records of its business and operations under and in connection with this Franchise. All such books of accounts and records shall be kept at the Company's principal office.

9.2. Upon reasonable request of the City, the Company shall present any and all records, accounts, and books for inspection relative to the Gross Revenues of the Company within the corporate limits of the City.

9.3. The City may, if it sees fit, upon reasonable notice to the Company, have the books and records of the Company examined by a representative of the City to ascertain the correctness of the reports agreed to be filed therein. The Company shall make available to the auditor such personnel and records as the City may request in order to complete such audit, and shall make no charge to the City therefore. The Company shall assist the City in its review by providing all requested information no later than fifteen (15) days after receipt of a request.

9.4. The City may conduct an audit or other inquiry or may pursue a cause of action in relation to the payment of the franchise fee only if such audit, inquiry, or pursuit of a cause of action concerns a payment made less than three (3) years before the commencement of such audit, inquiry, or pursuit of a cause of action. Each party shall bear its own costs of any audit or inquiry, unless, if after receiving reasonable notice from the City of the City's intent to perform an audit, the Company fails to provide data, documents, reports, or information required to be furnished or fails to reasonably cooperate with the City during an audit properly performed, the Company shall be liable for payment of the City's reasonable and necessary expenses (including reasonable attorney's fees) incurred in obtaining such data, documents, reports or information.

9.5. In the event that a dispute arises regarding an audit performed on the Company's books and records, the Company agrees to participate in mediation in an attempt to resolve the dispute. The Company agrees that it will consult with the City and the parties will mutually agree on a Mediator to preside over the mediation.

9.6. The Company shall keep and maintain complete books, records, accounts, documents, and papers

pertaining to the Company's System Facilities within the City and all the underlying books, records, and working papers on which the Gross Revenue calculations were based in accordance with the Company's record retention policy or for a period of four years, whichever is greater.

SECTION 10. REPEAL:

This ordinance repeals all previously adopted franchise ordinances by the City Council of the City of New Fairview, Texas which granted the Company the right to use the City Rights-of-Way.

SECTION 11. SEVERABILITY AND CONFLICT:

If any section, paragraph, sentence, clause, phrase, or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable. It is further agreed that if part of this Ordinance is determined to be invalid, either the City or the Company may open negotiations solely with respect to a substitute for such Section, or portion of this Ordinance within two (2) weeks after a ruling has been made. In the event of a conflict between this Franchise and the City's Code of Ordinances, this Franchise controls, except that by the granting of this Franchise the City does not render or to any extent lose, waive, impair, or lessen the lawful powers and rights, now or hereafter vested in the City under the Constitution and statutes of the State of Texas and of the United States of America.

SECTION 12. ACCEPTANCE OF FRANCHISE:

To accept this franchise, the Company must file with the City Secretary its written acceptance of this Franchise Ordinance within sixty (60) days after its final passage and approval by the City Council. If such written acceptance of this Franchise Ordinance is not filed by Company, the Franchise Ordinance shall be rendered null and void. Once this Franchise has been accepted, the terms herein may not be modified except by an ordinance duly adopted by the City, and subsequently accepted by the Company in the same manner as the Franchise.

SECTION 13. EFFECTIVE DATE:

This Franchise shall be effective only after its final passage by the City Council and receipt by the City of Company's acceptance as required above. Provided that has taken place, this Franchise shall be effective as of January 1, 2024.

SECTION 14. NOTICES:

Any notices required to be sent to the parties under this Franchise shall be sent to the following:

CITY:

City Administrator

999 Illinois Ln

New Fairview, TX 76078-3940

COMPANY:

Public Affairs Manager

5808 Ashleyanne Circle

Wichita Falls, TX 76310

PASSED, ADOPTED and APPROVED the 15th day of January, 2024, at a special meeting of the City

Council of the City of New Fairview, Texas, by a vote of _____ yeses and _____ noes.

ATTEST:

CITY OF NEW FAIRVIEW:

Brooke Boller
City Secretary

John R. Taylor
Mayor



**CITY COUNCIL
AGENDA MEMO**

Prepared By: John Cabrales Jr, City Administrator

January 15, 2024

**First Amendment to the Professional Service Agreement
with Schaumburg & Polk, Inc.**

DESCRIPTION:

Receive, consider, and act on a Resolution approving the First Amendment to the Schaumburg & Polk, Inc Professional Services Agreement to complete and submit an application for a Certificate of Convenience and Necessity for water and wastewater services.

BACKGROUND INFORMATION:

A few years back, the City was approached by some developers interested in the construction of mixed-use developments and inquired about the City’s capability of providing water and wastewater treatment services for these planned developments. The City does not own and operate any public water and public wastewater system, and in fact does not hold a Certificate of Convenience and Necessity (CCN) for either water or wastewater. As a result, the City contracted with Schaumburg & Polk, Inc (SPI) to investigate the feasibility of creating and operating a City owned water and wastewater system and obtaining a CCN for both of these services. The developers of Constellation Lake and Shoop Ranch were asked to help fund this feasibility study.

SPI submitted their final report to the City in April 2021, where they considered numerous options for source water, including two options for purchasing treated water from Upper Trinity Regional Water District (UTRWD) and the City of Fort Worth. The SPI report also recommended that the City pursue the acquisition of both water and wastewater CCN’s immediately. On March 15, 2021, the City Council approved a Professional Services Agreement (Resolution 202103-05-158) for \$29,200 with SPI to complete and submit an application for a CCN for water and wastewater systems. The Council also authorized the City Administrator to execute reimbursement agreements to include the \$40,000 contribution with the developers for Constellation Lake and Shoop Ranch.

SPI has completed a significant portion of the work needed for the application, but apparently, the City had told them to stop their work in the summer of 2021. Staff recently met with SPI to determine what is needed to get the application process moving forward again. According to SPI, the following action items are necessary to complete the CCN application submission process:

- Get reacquainted with the project and recover status.
- Check all maps that have been created and make necessary revisions, if any, due to changes that may have occurred over the past two years.
- Renew communications with the PUC and the TCEQ.
- Re-initiate CCN applications for water and wastewater and complete applications (make water a priority). This will require participation and assistance from the City, especially regarding financial statements required by the PUC.
- Complete GIS maps for proposed CCN's in accordance with PUC requirements.
- Re-initiate and complete Report to TCEQ for justifying registration of New Fairview as a public water supply system.

In order to re-start and complete the CCN application process, the Professional Services Agreement (PSA) that was approved on March 15, 2021, will need to be amended. SPI has submitted a proposal (attached) to amend the PSA section 7.01, Basis of Payment – Lump Sum, to reflect the work needed to re-start and complete the CCN application process at their new rates.

Staff recommends approval of the Resolution.

FINANCIAL CONSIDERATION:

As stated above, the initial Professional Services Agreement was \$29,200 and SPI is asking for an increase of \$4,280. This will increase the project amount to \$33,480. SPI has already been paid \$20,000 from the initial PSA, therefore there is \$9,200 remaining. So, with the addition of the \$4,280, that leaves a balance of \$13,480 needed to complete the CCN application filing. This amount can be paid from a one-time drawdown from the Fund Balance.

1. Acquire CCNs for Water and Wastewater amount of	\$ 29,200.00
2. Additional services amount of (Amend #1)	<u>\$ 4,280.00</u>
3. Total Amended Fee Amount	\$ 33,480.00

RECOMMENDED MOTIONS:

I move to **Approve/Deny** a Resolution approving the First Amendment to the Schaumburg & Polk, Inc Professional Services Agreement to complete and submit an application for a Certificate of Convenience and Necessity for water and wastewater services.

ATTACHMENT(S):

1. Resolution 202401-04-112
2. SPI Agreement (Mar. 15, 2021)



**CITY OF NEW FAIRVIEW, TEXAS
RESOLUTION 202401-04-112**

A RESOLUTION OF THE CITY OF NEW FAIRVIEW, TEXAS APPROVING THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICE AGREEMENT WITH SCHAUMBURG & POLK, INC. TO COMPLETE AND SUBMIT AN APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY; AND PROVIDE AN EFFECTIVE DATE.

WHEREAS, the City of Fairview is an incorporated city in the State of Texas as a Type A General Law city, as classified by the Texas Local Government Code; and

WHEREAS, the City desires to obtain a Certificate of Convenience and Necessity (CCN) to provide water and wastewater services throughout the city; and

WHEREAS, the City contracted with Schaumburg & Polk, Inc (SPI) on March 15, 2021, Resolution 202103-05-158, to provide this service, but ask SPI to pause the CCN application process; and

WHEREAS, the City now wishes to re-start and complete the CCN application process and is therefore amending the original agreement to cover the additional cost to SPI to re-acquaint themselves with this project and cover their increased labor rates.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW FAIRVIEW, TEXAS, THAT:

SECTION 1. All matters stated in the Recitals hereinabove are found to be true and correct and are incorporated herein all purposes as if set forth in full.

SECTION 2. The City Council hereby approves the First Amended to the Professional Services Agreement with Schaumberg & Polk, Inc, attached hereto as Exhibit "A" and incorporated for all purposes.

SECTION 3. The City Council approves the City Administrator's execution of the same on behalf of the City, in final form as determined by the City Attorney.

SECTION 4. The City Council does authorize the City Administrator to direct and work with Schaumberg & Polk, Inc to prepare the necessary documents and submittals to successfully submit the CCN application.

SECTION 5. If any portion of this Resolution shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and the Council herby determined that it would have adopted this Resolution without the invalid provision.

SECTION 6: This Resolution shall take effect immediately upon its passage, as provided by law.

PRESENTED AND PASSED on this 15th day of January 2024, at a regular meeting of the New Fairview City Council.

JOHN TAYLOR, Mayor

ATTEST:

BROOKE BOLLER, City Secretary

EXHIBIT A

**FIRST AMENDMENT TO THE TO THE PROFESSIONAL SERVICE AGREEMENT
WITH SCHAUMBURG & POLK, INC. TO COMPLETE AND SUBMIT AN
APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY**

This First Amendment to the Professional Services Agreement with Schaumburg & Polk, Inc, is entered into by and between the City of New Fairview, Texas, a Type A general law municipality located in Wise and Denton Counties (the “City”), and Schaumburg & Polk, Inc, collectively referred to as the “Parties”, acting by and through their respective authorized representatives.

FIRST AMENDED AGREEMENT

A. Section 1.01, “Basis Agreement and Period of Service,” is amended to read as follows:

- A.** Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01.
- B.** Engineer shall complete its services within a reasonable time, or within the following specific time period: **Submit completed CCN application to the Public Utility Commission of Texas (PUCT) within 6 months following the execution of this Frist Amendment to the Agreement, contingent upon PUCT review, communications, and turn-around times.**
- C.** If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

B. Section 7.01, “Basis of Payment - Lump Sum,” is amended to read as follows:

A. Using the procedures set forth in Paragraph 2.01, Owner shall pay the Engineer lump sum fee amount as follows:

1. Acquire CCNs for Water and Wastewater amount of	\$29,200.00
2. Additional services amount of (Amend #1)	<u>\$ 4,280.00</u>
3. Total Amended Fee Amount	\$33,480.00

B. The New Fairview City Council has authorized the City Administrator to execute this First Amendment to the Agreement with SPI for an additional \$4,280.00 to SPI to re-acquaint themselves with this project and cover their increased labor rates.

- C. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

Except as expressly set forth in this First Amendment, the terms of the Agreement remain unchanged and in full force and effect. In the event of any conflict between the meaning of any provision of this First Amendment and any provision of the Agreement, the provision(s) of this First Amendment shall control. This First Amendment, along with the Agreement (collectively known as the "First Amended Agreement") represent the complete agreement of the Parties.

CITY OF NEW FAIRVIEW, TEXAS

John Cabrales Jr., City Administrator

Date: _____

ATTEST:

Brooke Boller, City Secretary

SCHAUMBURG & POLK, INC.

Franklin Stephens, P.E.
Vice-President

Date: _____