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*Attorney for Questar Gas Company  
dba Dominion Energy Utah*

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

IN THE MATTER OF THE APPLICATION  
OF DOMINION ENERGY UTAH TO  
EXTEND SERVICE TO EUREKA, UTAH

IN THE MATTER OF THE APPLICATION  
OF DOMINION ENERGY UTAH FOR  
APPROVAL TO IMPLEMENT A GSE RATE  
TO PROVIDE SERVICES TO CUSTOMERS  
IN EUREKA, UTAH

Docket No. 19-057-31

**SUBMISSION OF FRANCHISE  
AGREEMENT**

Pursuant to the Utah Public Service Commission's (Commission) Report and Order issued on August 27, 2020 in the above-referenced docket, Questar Gas Company dba Dominion Energy Utah (Company, DEU, or Dominion Energy) respectfully submits its Franchise Agreement with Eureka City, attached hereto as DEU Exhibit 1.

On November 21, 2019, Dominion Energy filed a notice with the Commission that it intended to file a voluntary request for Commission approval to extend its high pressure and intermediate-high pressure natural gas distribution system to the city of Eureka, Utah. On August 27, 2020, the Commission issued an Order approving the Company's request with some conditions. The Order provided, among other things, that the Commission granted the Company

a Certificate of Public Convenience and Necessity “subject to DEU filing, as soon as practicable, documentation showing that it has obtained any consent, franchise agreement, or any other permit required by the city of Eureka, or any other local governmental entity having jurisdiction over the project.” Order at p. 31.

On September 18, 2020, Eureka City entered into a Franchise Agreement with the Company providing DEU with the right to construct, maintain and operate a natural gas distribution system within the city. A copy of that Franchise Agreement is attached hereto as DEU Exhibit 1.

The Company notes that immediately prior to, or even during construction, it will be required to obtain permits from the Utah Department of Transportation, conditional use permits, building permits, road cut permits and storm water permitting. The Company may also be required to obtain permits to dispose of contaminated soils encountered during construction. The Company will submit documentation evidencing its receipt of such permitting when it does so.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of November, 2020.

DOMINION ENERGY UTAH

A handwritten signature in blue ink that reads "Jennifer Nelson Clark". The signature is written in a cursive style and is positioned above the printed name and contact information.

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*Attorney for Dominion Energy Utah*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the SUBMISSION OF FRANCHISE AGREEMENT was served upon the following persons by e-mail on November 17, 2020:

Patricia E. Schmid  
Justin C. Jetter  
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A handwritten signature in blue ink, appearing to be 'M. Beck', is written over a horizontal line.

## FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT (hereafter "Agreement") entered into the date and year hereinafter provided, by and between EUREKA CITY, a municipal corporation of the state of Utah, (hereafter "City"), and QUESTAR GAS COMPANY dba DOMINION ENERGY UTAH, (hereinafter "Company").

### RECITALS

WHEREAS, Company desires to construct, maintain and operate a gas distribution system within the City; and

WHEREAS, the City, in the exercise of its police power, ownership, and use rights over and in all such City streets, alleys, viaducts, bridges, roads, lanes, public ways, rights-of-way, highways, and other public places (hereafter "Public Ways"), and pursuant to its other regulatory authority, has determined that it is in the best interest of the public to grant the Company, its successors and assigns, a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company have reached an agreement that has been formalized in this Agreement.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration and further, in contemplation of subsequent approval by legislative action of the Eureka City Council as hereinafter provided, the parties mutually agree as follows:

### ARTICLE I

#### FRANCHISE ORDINANCE; TERM OF FRANCHISE; RENEWAL

1.1 **Grant of Franchise.** For good and valuable consideration, the City grants to Company a nonexclusive franchise (the "Franchise") to construct, lay, alter, maintain, operate, repair, inspect, protect, remove, and replace in the present and future Public Ways, a gas distribution system for furnishing natural gas to the City and its inhabitants for heating and other purposes. Company shall have the right to erect, construct, equip, and maintain along, over, and under the Public Ways a system of mains, pipes, laterals, valves, mitigation and monitoring equipment, and related natural gas distribution equipment and facilities ("Facilities") as are reasonably necessary for supplying natural gas service in accordance with this Franchise.

1.2 **Term and Renewal.** The Franchise granted to the Company shall be for a period of twenty (20) years commencing on the date this Agreement is executed. At the expiration of the initial term, the Franchise shall continue in effect upon the same terms and conditions for up to two additional terms (each of which is a renewal period) of fifteen (15) years each. The City may terminate the Franchise at the end of the initial term, or at the end of any renewal period, by giving Company written notice of the City's intent to so terminate not less than ninety (90) calendar days before the expiration of the initial term or any renewal period.

## ARTICLE II

### TAX AND CONSIDERATION

2.1 **Municipal Energy Sales and Tax.** Company acknowledges that the City has levied a municipal energy sales and use tax (MET) on the sale or use of the delivered value of taxable energy within the City. Company agrees to collect the MET and pay it directly to the City as provided in Utah Code Ann. §§ 10-1-301, et seq or any successor statute. To the extent legally permitted, the City may adjust the amount of the MET. Nothing in this Franchise shall affect the City's right, under the MET, as provided by statute, or any other applicable law, to prospectively impose upon, charge, or collect any lawful fee, tax, license fee, franchise fee, or similar charge, or any combination of any of the foregoing, provided the City is or becomes legally authorized to do so. In the event that the MET, or similar successor tax or fee is declared illegal, unconstitutional, or void for any reason by any court or other proper authority, or in the event Company provides other services than natural gas, or receives other revenues for services or for the use of its Facilities in the Streets not covered by the MET, then Company shall be contractually bound to pay the City as a franchise fee, on the same schedule for the maximum amount as is allowed as a franchise fee for such services under law. In addition, if the franchise fee is determined invalid by a court or authority having jurisdiction, the City shall have the right to impose occupation and license fees and permit charges as allowed by law.

2.2 **Consideration.** In Consideration of this Franchise, the Company shall pay to the City the sum of \$50.00.

## ARTICLE III

### COMPANY EXCAVATIONS AND RELOCATIONS

3.1 **Franchise Rights to Use Public Property.** The Company shall have the right to excavate in, occupy, and use any and all Public Ways subject to the conditions of the City's ordinances, rules and regulations; provided, however, that the Company shall not, pursuant to this Agreement, place any new mains, structures, or pipes on, over, under, or within any City park or other recreational area identified as such in City records. Nothing contained herein shall preclude the City from granting a revocable permit for installations within any City park or other recreational areas.

3.2 **Company Duty to Relocate.** The City, in the interest of the public necessity, health, safety, and general welfare, may require the relocation or reinstallation (collectively "Relocation") of any Facilities located in any of the Public Ways of the City. Upon notice of such written notice, Company shall diligently commence Relocation as may be reasonably necessary to meet the requirements of the City. Such Relocation by the Company shall be at no cost to the City if: (i) such request is for the protection of the public health, safety and welfare pursuant to lawful authority delegated to the City (which includes, without limitation, the placement, widening, or realignment of streets; the placement or realignment of curb, gutter or sidewalks; the placement and relocation of traffic signals, street lighting or storm drainage facilities; the construction, completion, repair or relocation of a City project); (ii) the Facilities have been installed pursuant to this or any other Company franchise and not pursuant to a property or other similar right, including, but not limited to, a right-of-way, grant, permit,

or license from a state, federal, municipal, or private entity; and (iii) the City provides a new location for the Facilities. Otherwise, a Relocation required by the City pursuant to such written notice shall be at the City's expense or other third party. Before requiring a relocation of Facilities, the City shall, with the assistance of the Company, identify a reasonable alignment for the relocated Facilities within the Public Ways of the City. Company shall perform such relocation within a reasonable time after receipt of written notification of a relocation requirement by the City; provided, the period of time available to Company to effect such Relocation shall be reasonably extended on account of cold weather, material delivery, or other circumstances that are beyond Company's reasonable control. .

Notwithstanding the preceding paragraph, Company shall not be responsible for any costs associated with an authorized City project not attributable to Company's Facilities in the Streets. Further, all such costs shall be allocated among all utilities or other persons whose facilities or property are subject to Relocation due to an authorized City project.

**3.3 Reimbursement for Funded Projects.** If a City project requiring Relocation of Facilities is funded by federal or state monies that specifically include an amount allocated to defray the expenses of Relocation of Facilities, then the City shall reimburse Company up to the extent of such specified amount for any reasonable Relocation costs mandated by the project and actually incurred by Company to the extent that the City actually receives or is otherwise authorized to direct or approve payment of such federal or state funds. The City shall ensure that receipt of compensation from federal or state sources does not restrict or otherwise obligate Company's ownership of the Facilities in any way.

**3.4 Move Company Property.** The City shall not, intentionally alter, remove, relocate, or otherwise interfere with any Company Facilities.

#### ARTICLE IV

#### PLANS, DESIGN, CONSTRUCTION, AND INSTALLATION OF THE COMPANY FACILITIES; MAINTENANCE

**4.1 Annual Information Coordination.** Upon request, by either the City or the Company, the Company and the City shall meet for the purpose of exchanging information and documents regarding construction and other similar work within the City, with a view toward coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Any information regarding future capital improvements that may involve land acquisition shall, upon request, be treated with confidentiality.

**4.2 Repair of Private Property.** At any time the Company disturbs the yard, residence, or other real or personal property of a person, in connection with Company's exercise of rights granted under this Franchise and to the extent such repair or replacement was made necessary as a direct result of the operations of the Company, the Company shall restore or repair, at the expense of the Company, any fence, grass, soil, shrubbery, bushes, flowers, other low level vegetation, sprinkler system, irrigation system, gravel, flat concrete, or asphalt damaged or displaced, provided, however, the Company shall not be obligated under this Section to incur costs in excess of those customarily incurred by the Company. The requirements imposed upon the Company extend to any subcontractor or independent contractor that the Company might employ to perform

the tasks outlined in this Section. Notwithstanding anything in the Section 4.2 or this Franchise to the contrary, restoration required due to any work performed by Company pursuant to a right-of-way, easement, license, or contract with a landowner shall be governed by the terms of such right-of-way, easement, license, or contract.

4.3 **Permitting.** Except in the case of an emergency, the Company shall, prior to commencing new construction, reconstruction work, or excavation, in the Public Way, apply for a Permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. The Company will abide by all applicable ordinances and all reasonable rules, regulations, and requirements of the City; and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, the Company shall not be obligated to obtain a permit to perform emergency repairs.

4.4 **Compliance with Pollution Laws.** The Company shall continue to use its best efforts to take measures that will result in its Facilities within the City, meeting the standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company will provide the City with a reasonable report of Company's compliance measures.

4.5 **Extension of Service to City Facilities; Waiver of Advance Payment.** The Company, upon receipt of City's authorization for payment and construction, shall extend within the City, its Facilities to provide service to the City for municipal uses

4.6 **Compliance with Applicable Laws.** All infrastructure and assets installed or used under color of this Franchise, shall be used, constructed, and maintained in accordance with applicable federal, state, and City laws, rules and regulations, and shall be kept current with new codes as required by law, rule, or regulation.

4.7 **Location to Minimize Interference.** Company's Facilities shall be located so as to cause minimum interference with the use of the Public Ways by others, and shall cause minimum interference with the rights of property owners who adjoin the Public Ways.

4.8 **Repair Damage.** If, during the course of work on its Facilities, the Company causes damage to or alters any Public Way or public property, the Company shall (at its own cost and expense and in a manner approved by the City's Director of Public Works) replace and restore it in as good a condition as existed before the work commenced.

4.9 **Safety Standards.** The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations or standards imposed by law and City standards established by the City.

4.10 **Notification.** Before commencing any street improvements or other work within a Public Way, Company shall make reasonable efforts to notify nearby residents of work to be performed.

## ARTICLE V

### POLICE POWER

The City expressly reserves, and the Company expressly recognizes the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules, and regulations, as may, by the City, be deemed necessary in the exercise of its police power for the protection of the health, safety, and welfare of its citizens and their properties.

## ARTICLE VI

### DIRECTOR OF PUBLIC WORKS

6.1 **City Representative.** The Director of Public Works (hereafter "Director") or his/her designee, or such other person as the Mayor may designate, is hereby designated the official of the City having full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Agreement and to investigate any alleged violations or failures of the Company to comply with said provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of the City Representative to so act shall not constitute any waiver or estoppel.

6.2 **Company Duty to Cooperate.** In order to facilitate such duties of the Director, the Company agrees that upon reasonable request and notice from the City, Company shall coordinate with the City to plan its Facilities in acknowledgement and preparation for the transportation and land use elements of the City general plan and its Master Plans.

6.3 **No Waiver or Estoppel.** Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

6.4 **City's Charge.** Charges to the City by the Company, including any advance payments or deposits, for any service or supply shall be at the rates allowed by the Public Service Commission for similar or identical service or supplies provided by the Company to any other similarly situated customer or consumer of the Company.

6.5 **Bonding.** If City ordinance requires Company to post a surety bond, that section of the ordinance is expressly waived.

## ARTICLE VII

### ANNEXATION OF THE COMPANY PROPERTY

7.1 Except as provided below, when any property owned by the Company becomes eligible for voluntary annexation to the City, the Company will petition and undertake whatever action is necessary to annex that property upon request by the City; provided, however, that no



condition of such annexation shall impair the Company's ownership or use of its property, and that Company property that is used solely as transmission corridors and that are not both parallel and adjacent to the City boundaries need not be annexed into the City. Except as herein provided, the Company agrees to comply with all terms and conditions imposed upon the annexation by the City that are not more stringent than those generally imposed upon property owners seeking annexation of their land to the City.

7.2 Upon the annexation of any territory to the City, all right and franchise hereby granted shall extend to the territory so annexed to the extent the City has authority. All Facilities installed pursuant to a franchise with another municipality or a county which are owned, maintained, or operated by the Company located within, under, or over streets of the territory so annexed shall thereafter be subject to all terms hereof. Notwithstanding anything herein to the contrary, an annexation shall not impact Company's property rights held pursuant to any right-of-way, easement, license, or contract.

## ARTICLE VIII

### TRANSFER OF FRANCHISE

The Company may transfer or assign its rights under this Agreement to (a) any parent, affiliate, or subsidiary of Company, or (b) any successor-in-interest or transferee of Company having all necessary approvals, including those from the Utah Public Service Commission or its successor, to provide utility service within the City limits affiliate of Company. Otherwise, Company shall not transfer, assign, or delegate its rights or obligations under the Franchise unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Agreement as property subject to the lien of the Company's mortgage(s) shall not constitute a transfer or assignment.

## ARTICLE IX

### ACCEPTANCE BY THE COMPANY OF FRANCHISE

**Company's Duty to Approve Franchise Agreement.** Within sixty (60) days after the effective date of this Agreement adoption by the City Council, the Company shall execute this Agreement and file an unqualified acceptance of this Agreement in writing with the City Recorder of the City in the form approved by the City Attorney; otherwise, this Agreement and any ordinance adopted relating thereto and all rights granted hereunder shall be null and void.

## ARTICLE X

### EARLY TERMINATION OR REVOCATION OF FRANCHISE

10.1 **Grounds for Termination.** The city may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

- (a) The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its Council, may after hearing where Company has an opportunity to respond, determine that such failure is of a material nature; and thereupon, after written notice given the Company of such determination, the Company shall, within thirty (30) days of such notice, commence efforts to remedy the conditions identified in the notice, and will have six (6) months (or additional time specifically granted by the City if such remedy cannot be completed within six months), from the date it receives notice to remedy the conditions. After the expiration of such six (6) month period (or additional time specifically granted by the City), and failure to correct such conditions, the City may declare this Agreement forfeited,; provided, however, that any such declaration of forfeiture shall be subject to judicial review as provided by law.
- (b) In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City that is found to be fraudulent or in violation of a felony criminal statute of the State of Utah by a court of competent jurisdiction.

## ARTICLE XI

### INDEMNIFICATION

11.1 **No City Liability.** Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of any, person that may occur in the construction, operation, or maintenance by the Company of its Facilities hereunder.

11.2 **Company Indemnification of City.** The Company shall indemnify, defend, and hold the City harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind of account of or arising from the grant of this Agreement, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorney's fees. Company's obligation to so defend, indemnify and hold the City harmless shall include, without limitation, any such claims, etc., arising from Company's negligent acts or omissions pursuant to the exercise of the Franchise, whether or not any such use, act or omission complained of is authorized, allowed or prohibited by the Franchise. Notwithstanding any provision to the contrary, Company shall not be obligated to indemnify, defend or hold the City harmless to the extent that any underlying claim, demand, lien, liability, damage, action, and proceeding arises out of or in connection with any act or omission of the City or any of its agents, officers or employees. This indemnification provision shall not be construed to prevent the City from raising and receiving the protections of any defense under the Utah Governmental Immunity Act.

**ARTICLE XII**

**AMENDMENT**

12.1 At any time during the term of this Agreement, the City, through its City Council, or the Company may propose amendments to this Agreement by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).

12.2 No amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company and formally adopted in writing.

**ARTICLE XIII**


**SEVERABILITY**

13.1 **Conditions.** If any section, sentence, paragraph, term, or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal legislative, regulatory or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of this Agreement or any renewal or renewals thereof.

13.2 **No Benefits to Third-Party Beneficiaries.** No provision of this Agreement shall be interpreted to confer upon any person or entity, a third-party benefit. It is the intent of this Agreement that all benefits be strictly limited to the parties hereto.

THIS AGREEMENT is executed on this 18 day of Sept., 2020.

EUREKA CITY

  
\_\_\_\_\_  
NICK CASTLETON, Mayor


ATTEST:

  
\_\_\_\_\_  
PATRICIA BIGLER, City Recorder

APPROVED AT TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

QUESTAR GAS COMPANY dba DOMINION  
ENERGY UTAH

  
\_\_\_\_\_  
By: Craig Wagstaff  
Title: Sr. Vice President and General Manager  
Western Distribution Operations

## ACCEPTANCE OF FRANCHISE

This is to certify that Questar Gas Company dba Dominion Energy Utah accepts the franchise for the construction, operation and maintenance of a gas distribution system granted by the Council of the City of Eureka, County of Juab and State of Utah, as evidenced by Ordinance No. [no number provided] adopted by the Mayor and Council on September 18, 2020. Questar Gas Company dba Dominion Energy Utah accepts the franchise as approved and agrees that it will be bound by and observe and carry out the terms and conditions of the franchise. This Acceptance of Franchise is signed on behalf of the corporation and by authority of a resolution of its Board of Directors.

Dated at Salt Lake City, Utah, this 15<sup>th</sup> day of November 2020.

QUESTAR GAS COMPANY dba  
DOMINION ENERGY UTAH



\_\_\_\_\_  
Craig Wagstaff  
Sr. Vice President and General Manager  
Western Distribution Operations