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ORDINANCE NO: _____

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 DESOTO, DALLAS COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

WHEREAS, Atmos Energy Corporation is engaged in the gas utility business in the State of Texas and the City of Desoto, Texas (“City”) and is using the public streets, alleys, grounds, and rights-of-way within the City for that purpose under the terms of a franchise ordinance duly passed by the governing body of the City, being Ordinance No. 1951-~~13~~¹³ passed on July 16, 2013; and

WHEREAS, franchise Ordinance No.1951-13 expires on December 31, 2023; and

WHEREAS, City and Atmos further find it to be to the mutual advantage of City and Atmos to and they each desire to enter into a new Franchise Agreement as set out in this Ordinance establishing the conditions under which Atmos will operate in the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DESOTO, TEXAS:

SECTION 1. GRANT OF AUTHORITY: The City of DeSoto, Texas, hereinafter called “City,” hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called “Atmos Energy,” its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places (“Public Rights-of-Way”), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the “System”) to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2048.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF ATMOS ENERGY FACILITIES:

- A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate

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barriers to mark excavations or obstructions, and restore to approximate original condition all Public Rights-of-Way that it may disturb. In determining the location of the facilities of the City and other users of Public Right-of-Way within City, City shall minimize interference with then existing facilities of Atmos Energy and shall require other users of Public Rights-of-Way to minimize interference with existing facilities of Atmos Energy. In the event of a conflict between the location of the proposed facilities of Atmos Energy and the location of the existing facilities of City or other users of Public Rights-of-Way within Public 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 within the Public Rights-of-Way.

Atmos Energy or contractors working on behalf of Atmos Energy shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Atmos Energy's operations in Public Rights-of-Way. City shall provide Atmos Energy with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy'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 Public Rights-of-Way, Atmos Energy shall do so as soon as practically possible with respect to the scope of the project. In no event shall Atmos Energy be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by City.

- B. If City, in constructing its sewers, drainage, water lines, streets, or utilities, should request that Atmos Energy remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, Atmos Energy shall do so at its own expense for facilities that are in conflict, unless such work is for the primary purpose of beautification or to accommodate a private developer. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Atmos Energy.

When Atmos Energy is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for

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reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City. Upon receipt of an amount of reimbursement intended for utility relocations including gas utilities, City shall remit to the Company, within thirty (30) days of receipt, any portion of such reimbursement specifically designated as a reimbursement of Company's costs incurred in the relocation or removal of Company's facilities but only after City has been fully reimbursed for its own costs of relocation or removal of utilities and related facilities. However, nothing in this agreement shall require City to make such application.

If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines, Public Rights-of Way, streets or utilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

C. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek a surcharge or recover relocation costs pursuant to applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs.

. In the event Company, after notice, fails or refuses to commence, pursue, or complete such relocation work within a reasonable time, City may require Company to attend a meeting that establishes a formal record of the reasons for the delay and the timeframe within which Company will complete the relocation work. If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within the Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines, Public Rights-of-Way, streets, or utilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the cost

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and expense of such removal or relocation. If the City requires Atmos Energy to remove, modify, alter, or relocate its mains, laterals, or other facilities specifically for the purpose of enabling the use of the Public Rights-of-Way by another private person or corporation, Company shall not be bound to make such changes until the other private person or corporation has agreed to reimburse the Company for relocation expenses, provided, however, that the City shall not be liable for the reimbursement.

D. If City abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy’s right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Atmos Energy for all removal or relocation expenses if Atmos Energy agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Atmos Energy to remove or relocate its facilities and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public 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.

SECTION 3. INDEMNITY & INSURANCE:

General Provisions. In consideration of the granting of this Franchise, Atmos Energy agrees that the City, including its agents and employees, shall not be liable or responsible for any costs, expenses (including attorneys’ fees), or any other damage to persons or property by reason of Atmos Energy’s construction, operation, maintenance, or replacement of Atmos Energy’s System within Public Rights-of-Way and Atmos Energy does hereby release, agree to indemnify and keep harmless the City, its agents and employees from and against all suits, actions, or claims of death or 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 any acts or omissions of Atmos Energy, its agents or employees in connection with their operations, except to the extent such death, injury or damage is attributable to the City’s negligent or intentional acts or omissions. In the event that any action, suit, or proceeding is brought against the City, its agents or employees, upon any liability arising out of Atmos Energy’s operations, the City shall give notice in writing to Atmos Energy.

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Upon receipt of such notice, Atmos Energy, at its sole expense, shall defend such action and take all such steps as may be necessary or proper to prevent the obtaining of a judgment against the City and/or to satisfy said judgment. The City agrees to reasonably cooperate with Atmos Energy in connection with such defense. In the event of joint and concurrent negligence or fault of both Atmos Energy and City, responsibility and indemnity, as allowed by law, 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. The City expressly does not waive its governmental immunity under the Texas Tort Claims Act and any other applicable laws. It is understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this section shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise, to any person or entity other than City and Atmos Energy.

Damage to City Property. If the negligence or intentional acts or omissions by Atmos Energy, including its employees and agents, results in damage of any property owned by City, Atmos will be responsible for repairing the damages without charge to City or for the cost of repair reasonably incurred by City. However, if such damage by Atmos Energy is due to inaccurate information with respect to the location or description of City’s facilities within the Public Rights-of-Way, City will be responsible for all costs associated with such repair or related consequences. Atmos Energy agrees to notify the appropriate City official as soon as reasonably possible after the occurrence of such damage.

Damage to Atmos Energy Property Due to Work by Others. The City reserves the right to permit to be laid sewer, electric, and other utilities, pipelines, cables, conduits and facilities and to do and permit to be done any underground or aboveground work that may be necessary or proper within the Public Rights-of-Way to facilitate the same. The City also reserves the right to change any curb, sidewalk, grade of the street, alley or other Public Right-of-Way due to a publicly funded City project. In permitting this work to be done by a third party, the City shall not be liable to Company for any resulting damage, but nothing herein shall relieve any other third party from being responsible for the damage to Atmos Energy facilities. If the negligent or intentional acts or omissions by City, including its employees and authorized agents (but excluding independent contractors), results in damage to Atmos Energy’s Facilities, City will be responsible for Company’s costs to repair the damages.

Insurance. Company shall maintain adequate insurance covering its operations and obligations of indemnity under the Franchise. Such insurance shall be at Company’s sole expense. Atmos Energy’s insurance of its obligations and risks undertaken pursuant to this Franchise may be in the form of self-

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insurance to the extent permitted by applicable law, but in no instance shall such self-insurance be less than \$10,000,000 in commercial insurance coverages. An insurance certificate shall be provided to the City initially and upon any substantial reduction in coverage. Together with such insurance certificate, this Franchise shall satisfy any requirements in the City of DeSoto Code of Ordinances, with respect to proof of appropriate insurance or other financial assurance required for receipt of a permit to perform work within the Public Rights-of-Way.

SECTION 4. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 5. PAYMENTS TO CITY:

A. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on a quarterly basis, on or before the 15th days of February, May, August, and November during the term of this franchise the last payment being made on the 15th day of February, 2049, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in 5.B below, received by Atmos Energy during the preceding calendar quarter.

B. "Gross Revenues" shall mean:

- (1) all revenues received by Atmos Energy from the sale of gas to all classes of customers (excluding gas sold to another gas utility in the City for resale to its customers within City) within the City;
- (2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);
- (3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted

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Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and

- (4) “Gross Revenues” shall also include fees collected pursuant to this agreement and the following “miscellaneous charges:” charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the City.

- (5) “Gross Revenues” shall not include:
 - (a) revenues billed but not ultimately collected or received by Atmos Energy;
 - (b) contributions in aid of construction;
 - (c) the revenue of any affiliate or subsidiary of Atmos Energy;
 - (d) sales tax paid to the City;
 - (e) interest or investment income earned by Atmos Energy; and
 - (f) 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.

C. The initial payment for the rights and privileges herein provided shall be due on or before May 15, 2024, and shall be for the privilege period January 1 through March 31, 2024, and each succeeding payment shall be for the privilege period of the calendar quarter preceding the quarter in which the payment is made.

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 charges (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 Atmos Energy or Atmos Energy’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

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sums of money paid as may be necessary to satisfy Atmos Energy’s obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy

If Atmos Energy 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 Atmos Energy’s Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public 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 Atmos Energy to 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.

E. Atmos Energy Franchise Fee Recovery Tariff

- (1) Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.
- (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 Atmos Energy’s rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy’s franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy 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 Atmos Energy.
- (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 Atmos Energy.

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F. Lease of Facilities Within City’s Rights-of-Way. Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within the City’s public rights-of-way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 5 of this Ordinance. This authority to Lease Facilities within City’s Rights-of-Way shall not affect any such lessee, licensee or user’s obligation, if any, to pay franchise fees.

G. 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.

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SECTION 6. DEFAULT AND FORFEITURE In the event Atmos Energy fails or refuses to correct a defect, impairment, or substandard condition after written notice by the City and such ~~failure has~~failure ~~has~~ continued for longer than thirty (30) days from the date the notice was received by Company, the City ~~shall have~~shall have the right to file a claim through the Company’s claims department. The City shall notify Company, in writing, of an alleged failure to comply with a material provision of this Franchise, which notice shall specify the alleged failure with reasonable particularity. The Company shall, within thirty (30) days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or, subject to acceptance by the City, state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure. In the event that such cure is not forthcoming, such default shall entitle the City to compel compliance by suit in any court of competent jurisdiction and upon final judgment not subject to further appeal being

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entered in favor of the City, City may declare this Franchise to be forfeited and cancelled. Prior to a decision from such court, the Company shall have the right to operate its facilities pursuant to the provisions of this Franchise.

Atmos Energy agrees that if, for any reason other than an event force majeure, the Company fails to pay the regularly scheduled Franchise fees as provided in this Franchise within thirty (30) days following written notice from the City that the Company has failed to make payment, such failure shall be sufficient to permit the City to forfeit this Franchise without court action. For the purpose of this section, an event of force majeure means any event or circumstance or combination of events or circumstances beyond the reasonable control of the Company that materially and adversely affect Company or its performance of its obligations under or pursuant to this Franchise including but not limited to an act of God, act of civil or military authority, act of war (whether declared or undeclared), act (including delay, failure to act, or priority) of any governmental authority (including the City); epidemic, pandemic, civil disturbance, insurrection or riot, sabotage, fire, inclement weather conditions, earthquake, flood, strike, work stoppage or other labor difficulty, embargo, or other failure or delay beyond Atmos Energy’s reasonable control. The Company’s financial inability to perform shall expressly be excluded from force majeure events. In the event that any of the above force majeure circumstances prevent the timely payment of Franchise fees, the Company shall notify City within five (5) business days.

SECTION 7. CONFORMITY TO LAWS AND REGULATIONS.

A. Applicable Laws. This Franchise is subject to applicable provisions of the Constitution and Laws of the United States of America and the State of Texas. This Franchise shall in no way affect or impair the rights, obligations, or remedies of the parties under the Public Utility Regulatory Act of Texas, as it may be amended from time to time. Except as expressly provided herein, Atmos Energy shall not recover costs or expenses directly from the City (exclusive of charges related to the City’s billings as a customer) for taking any actions mandated by this Franchise or by any order or request issued by authority of this Franchise.

B. Reservation of Right to Adopt Rules and Regulations. The City reserves the right to adopt, in addition to the provisions included in this Franchise, such additional reasonable regulations as it shall find necessary with respect to governing the use of its Public Rights-of-Way, provided, however, that such regulations are not in conflict with the privileges granted by this Franchise.

SECTION 8. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Atmos Energy must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days

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after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Atmos Energy shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 9. PARAGRAPH HEADINGS. CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 10. EFFECTIVE DATE: If Atmos Energy accepts this ordinance, it becomes effective as of January 1, 2024. Franchise payments remitted to City prior to the effective date of this ordinance shall be calculated pursuant to the previous franchise agreement.

PASSED AND APPROVED on this the ~~20th~~ day of ~~February, 2023~~, ²⁰²³February, 2023.

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ATTEST:

Alicia Thomas, City Secretary

Rachel L. Proctor, Mayor
City of DeSoto, Texas

STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DESOTO §

I, Alicia Thomas, City Secretary of the City of DeSoto, Dallas County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of DeSoto, Texas, at a ~~_____~~ Regular session, held on the ~~_____~~ 20th day of ~~_____~~, February, 2023, as it appears of record in the Minutes in Book _____, page _____.

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WITNESS MY HAND AND SEAL OF SAID CITY, this the ___ day of _____, 2023.

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Alicia Thomas, City Secretary
City of DeSoto, Texas

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